(1) Supreme Court, U.S.
FILED

No. 051418 MAY 8 - 2006

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

NATIONAL ASSOCIATION OF FOR THE ADVANCEMENT MULTIJURISDICTION PRACTICE (NAAMJP) ET. AL., PETITIONER

v.

ALBERTO R. GONZALES, ANTHONY J. SCIRICA, CHIEF JUDGE OF THE THIRD CIRCUIT JUDICIAL COUNCIL ET. AL.

PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION, ALTERNATIVELY A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF MANDAMUS AND PROHIBITION, ALTERNATIVELY A PETITION FOR WRIT OF CERTIORARI

Joseph Robert Giannini
Counsel of Record
925 S. Westgate Ave. #102
Los Angeles, CA 90049
Phone 310 442 9386

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 393-4141 ♦ USSCINFO.COM

QUESTIONS PRESENTED

1. Congress in 1988 enacted law that declares federal district court local rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. 2072(b). Congress concurrently in 1988 enacted 28 U.S.C. 332(d)(4), and placed on each respondent United States Judicial Council, a mandatory periodic continuing duty to review and abrogate any federal district "local" court rules that were not consistent under the strictest scrutiny standard of review found in the law, as set forth in 28 U.S.C. 2072(b). The question presented is whether a United States District Court may require that applicants for general admission to its bar be licensed in the State where that court sits.

2. The Fifth Amendment principle of due process counsels no man shall be a judge in his own case. A judge shall disqualify himself where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b). Can due process be obtained by the petitioners in any Court, other than this Supreme Court, because this is the only Court that is not a named defendant, and does not have a personal bias or prejudice concerning a party, or a proprietary interest in the validity of the challenged local rules?

PARTIES TO THE PROCEEDING

Plaintiffs/Petitioners

National Association for the Advancement of Multijurisdiction Practice,(NAAMJP)
John F. O'Rourke, Alan Ellis, Donald Harris.

Defendants/Respondents

Alberto R. Gonzales, United States Department of Justice.

Anthony J. Scirica, Chief Judge of the Third Circuit Judicial Council, Dolores K. Sloviter, Jane R. Roth, Theodore A. McKee, Marjorie O. Rendell, James T. Giles, Thomas Vaniske, Sue L. Robinson, Doretta W. Ambrose, Garrett Brown Jr., members of the Third Circuit Judicial Council.

Douglas B. Ginsburg, Chief Judge of the District of Columbia Judicial Council, David B. Sentelle, Karen Lecraft Henderson, A. Raymond Randolph, Judith W. Rogers, David S. Tatel, Merrick B.Garland, Thomas F. Hogan, Emmet G. Sullivan, James Robertson, Richard W. Roberts, Ellen Segal Huvelle, Reggie B. Walton, members of the District of Columbia Judicial Council.

Hon. Mary M. Schroeder, Chief Judge of the Ninth Circuit Judicial Council, Arthur Alarcon, Alex Kozinski, Kim McLane Wardlaw, Marsha Berzon, Andrew J. Kleinfeld, B. Lynn Winmill, Stephen M. McNamee, Terry J. Hatter, Charles R. Breyer, Roger G. Strand, members of the Ninth Circuit Judicial Council.

Hon. John W. Bissell, Chief Judge for the United States District Court for the District of New Jersey, Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katharine S. Hayden, Faith S.

Hochberg, Jose L. Linares, William J. Martini, Joel A. Pisano, Alfred M. Wolfin, judges on the Court.

Hon. Consuelo B. Marshall, Chief Judge of the United States District Court for the Central District of California, Percy Anderson, Terry J. Hatter, Jr., Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter, judges on the Court.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT PROVISIONS INVOLVED 3

STATEMENT 3

REASONS FOR GRANTING THE PETITION 18

CONCLUSION 30

APPENDIX

District Court Order 1a

Plaintiffs' Exhibit List Summary 12a

Declaration of John F. O'Rouke 21a

Declaration of Alan Ellis 38a

Declaration of Donald Harris 47a

Declaration of Kenneth Owen for NAAMJP 59a

Conference of Chief Justices Adoption Of ABA MJP Recommendations for Admission on Motion 54a

ABA MJP Adoption of Admission on Motion.....55a

ABA Recommendation for Elimination of Challenged Local Rules (1995).....65a

Declaration of Marvin Comisky.....69a

Exhibit 0 – Dr. Klein Scientific Tests Re Licensing Officials.....72a

First Amended Complaint.....75a

Relevant Provisions Involved.....101a

TABLE OF AUTHORITIES

Page

CASES

BARNARD V. THORSTENN, 489 U.S. 546 (1989)..... 6

BOARD OF EDUCATION V. BARNETTE, 319 U.S 624, 638 (1943) 24

BOSE CORP. V. CONSUMERS UNION OF U.S., INC., 466 U.S. 485, 499 (1984) 17

CONSOLIDATED EDISON CO. V. PUBLIC SERV. COMN'N, 447 U.S. 530, 546 (1980)..... 27

ELROD V. BURNS, 427 U.S. 347, 373 (1976)..... 21

FRAZIER V. HEEBE, CHIEF JUDGE OF THE EASTERN DISTRICT OF LOUISIANA, 482 U.S. 641, 645 (1987) ... *passim*

FTC V. SUPERIOR COURT TRIAL LAWYERS ASSN. 493 U.S. 411 (1989) 26

GIANNINI V. REAL., 911 F.2D 354 (9TH CIR. 1990) CERT. DENIED 498 U.S. 1012, (1991) 17, 18

LAKEWOOD V. PLAIN DEALER PUBLISHING CO, 486 U.S. 750, 763 (1988) 27

MADISON JOINT SCHOOL DIST. NO. 8 V. WISCONSIN EMPLOYMENT RELATIONS COMM'N, 429 U.S. 167, 175-176 (1976)..... 27

MATTER OF FRAZIER, 594 F. SUPP. 1173, 1176 (E.D. LA 1984)..... 7

NAACP v. Claiborne Hardware Co., 458 U.S. 886, 933-34 (1982).....25

New York Times v. Sullivan, 376 U.S. 254, 266 (1964).....24

Nguyen v. United States 539 U.S. 69 (2003).....24

Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972).....26

Republican Party of Minn. v. White, 536 U.S. 765 (2002).....28, 29

Rosenberger v. Rector And Visitors of Univ. of VA, 515 U.S. 819 (1995).....27

Saenz v. Roe, 526 U.S. 489, 500 (1999).....17

Sec'y of State v. Joseph H. Munson Co., 467 U.S. 947, 956 (1984).....23

Simon & Schuster v. Crime Victims Bd., supra, 502 U.S. 105 (1991).....28

Sperry v. Florida, 373 U.S. 379 (1963).....29

Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985).....6

Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988).....6, 14

Thomhill v. Alabama, 310 U.S. 88 (1940).....23

U.S. v. Ferguson, 54 F.3d 825 (D.C. Cir. 1995).....11

VILLAGE OF SCHAUMBERG V. CITIZENS FOR A BETTER ENVIRONMENT, 444 U.S. 620, 634 (1980) 23

STATUTES

5 U.S.C. § 500(b) 23, 30

28 U.S.C.A. § 2071 18

28 U.SC. 332(D)(4) 17

28 U.S.C. § 1651 1

28 U.S.C. § 2071(B) 16

28 U.S.C. § 2072(B) ..... *passim*

28 U.S.C. § 332 21

28 U.S.C. § 455 ..... 1, 3

28 U.S.C. § 455(B)(1) 19, 20

28 U.S.C. § 455(E) 20

28 U.S.C. 2072(B) 21

RULES

FEDERAL RULES OF EVIDENCE 700 28

FRAP 46 ..... 22, 23, 29, 30

FRCP 26 3

SUPREME COURT RULE 11 1

SUPREME COURT RULE 20 1

SUPREME COURT RULE 5 ..... 22, 29

OTHER AUTHORITIES

FEDERAL LICENSE TO PRACTICE LAW, 56 N.Y. STATE BAR J. 15 (MAY 1984) 9

LEGISLATION, 55 TEMP. L. Q. 945, 960-964 (1982) 9

MARIE LEARY, "ELIGIBILITY REQUIREMENTS FOR, AND RESTRICTIONS ON, PRACTICE BEFORE THE FEDERAL DISTRICT COURT," NOVEMBER 7, 1995, ("LEARY REPORT") *WORKING PAPERS OF THE COMMITTEE ON RULES AND OF PRACTICE AND PROCEDURE: SPECIAL STUDIES OF FEDERAL RULES GOVERNING ATTORNEY CONDUCT* 125-182 (ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 1997). .....

MOORE'S FEDERAL PRACTICE 3RD ED., JUDITH A. MCMORROW AND DANIEL R. COQUILLETTE, "THE FEDERAL LAW OF ATTORNEY CONDUCT" .....

REPORT AND TENTATIVE RECOMMENDATIONS OF THE COMMITTEE TO PRACTICE IN THE FEDERAL COURTS IN THE JUDICIAL CONFERENCE OF THE UNITED STATES. 79 F.R.D. 187, 196 13

OPINIONS BELOW

The Order entered by Senior District Judge Thomas N. O'Neill, Jr. of the Eastern District of Pennsylvania denying Petitioners' Motion for Permanent Injunction and Declaratory Judgment was entered on March 23, 2006. This Order is not published, and it is set forth in the Appendix. An appeal was timely filed to United States Court of Appeals for the Third Circuit on April 19, 2006, docket 06-2420.

JURISDICTION

This Court has supervisory responsibility over federal "local" district court rules. Frazier v. Heebe, Chief Judge of the Eastern District of Louisiana, 482 U.S. 641, 645 (1987). Writ jurisdiction in this Court is authorized by 28 U.S.C. § 1651. This Petition for Mandamus and Prohibition is filed under Supreme Court Rule 20.

Alternatively, petitioners request this Court to grant certiorari to the United States Court of Appeals for the Third Circuit under Supreme Court Rule 11 because, as previously noted, "no man can be a judge in his own case," and judges on that Court are named defendants. See 28 U.S.C. § 455.

NOTIFICATION REQUIRED BY RULE 29.4

Service of process on defense counsel and the solicitor general is made.

RELEVANT PROVISIONS INVOLVED

(see appendix)

STATEMENT

Procedural History

Petitioners were in a Catch-22 because they wanted to challenge the attorney general admission local rules of the Eastern District of Pennsylvania, and elsewhere, without naming judges of those Courts as defendants. Petitioners in the initial Complaint, and subsequently in correspondence, requested from government defense counsel, the right to challenge all of the inconsistent local rules, without expressly naming as defendants the judges across our Union responsible for adopting and supervising the challenged rules. Petitioners sought this stipulation in order to avoid the waste of judicial resources. Petitioners in the complaint did not name any member of any Judicial Council as a defendant. The Assistant United States attorney defense counsel refused to enter any stipulation.

Petitioners were thus compelled because of a government refusal to cooperate to file a First Amended Class Action Complaint adding as named defendants the members of the Circuit Judicial Councils. These defendants were added because petitioners seek in the interests of judicial economy a decision that abrogates all of the challenged inconsistent general admission "local" rules across our Union. Petitioners allege these inconsistent general admission local rules on their face and as applied, constitute an overbroad prior restraint on sacred First Amendment rights, and violate the statutory standard of review set forth in 28 U.S.C. § 2072(b)("Such rules shall not abridge, enlarge or modify any substantive right.")

Petitioners filed a Motion for Preliminary and Permanent Injunction and Declaratory Judgment. Petitioners filed 25 exhibits in support of the requested relief. Defense counsel did not proffer any objection to the evidence. Petitioners were denied the right to conduct discovery.

Petitioners' Interrogatories and Requests for Admission went unanswered. Attorney General Gonzales refused to appear for a noticed deposition. The federal defendants refused to comply with the FRCP 26 mandatory disclosure requirements. There was no case management conference. There was no in-person hearing of any kind, in person or by phone.

The trial Court granted the defendants' Rule 12(b)(6) motion to dismiss. The trial Court further denied petitioners' Motion for Preliminary and Permanent Injunction and held "local" rules do not have to be "homogeneous." See 2a.

An appeal was timely filed on April 19, 2006 to the Third Circuit. Petitioners are by separate Motion requesting the judges on the Third Circuit to disqualify themselves under 28 U.S.C. § 455.

Facts

This case is about an unpopular federal claim and this Supreme Court's precedent the Court below refused to listen to or adhere. This case is about an American Bar Association recommendation that the challenged "local" attorney admission rules should be eliminated, the Court below refused to see or acknowledge. This case is about whether federal district court local rules can lawfully create an exception to the First Amendment freedoms to free speech, association, and to petition the Government for redress of grievances, that Congress is prohibited from abridging.

If a picture is worth a thousand words, the sum and substance of Petitioner's challenge can be graphically illustrated.

BEST AVAILABLE COPY

"Local" rules? I thought you said all men are created equal, and we created the Article III courts to eliminate "local" favoritism? How about Hamilton?
He doesn't qualify either. He is a New York lawyer

In Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985), a nonresident attorney challenged the bar admission rules of the New Hampshire Supreme Court. The New Hampshire Supreme Court denied the attorney's challenge. This Court reversed and concluded:

> The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "fundamental right." We believe that the legal profession has a noncommercial role and duty that reinforce the view that the practice of law falls within the ambit of the Privileges and Immunities Clause.[fn11] Out-of-state lawyers may — and often do — represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights. 470 U.S. at 281.

In Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988), an experienced attorney challenged her exclusion from the equal opportunity for admission on motion by rules of the Virginia Supreme Court. The Virginia Supreme Court rejected her challenge. This Court reversed, and held the State has burdened the right to practice law, a privilege protected by the Clause, by discriminating among otherwise equally qualified applicants solely on the basis of citizenship or residency. Id. at 67. This Court held the norm under the Privileges and Immunities Clause is comity, and attorneys who seek bar admission on motion qualify for the norm of comity. Id. at 64.

In Barnard v. Thorstenn, 489 U.S. 546 (1989), two attorneys challenged discriminatory Virgin Islands' bar admission rules. This Supreme Court invalidated the challenged rules. This Supreme Court further rejected the government contentions proffered to justify the discrimination, i.e., geographical isolation, Id. at 554, and insufficient resources to supervise the ethics of a nationwide bar membership. Id. at 566.

Petitioners argued the applicability of the above Supreme Court attorney bar admission cases to this proceeding. The decision below fails to cite or distinguish these cases.

The decision below consistent with this conspiracy of silence also does not spell out or analyze this Supreme Court's most recent decision on the validity of federal district court "local" general admission rules. That case, Frazier v. Heebe, Chief Judge of the Eastern District of Louisiana, 482 U.S. 641, 645 (1987), was decided almost 20 years ago, before Congress substantially rewrote the Rules Enabling Act in 1988, and before the computer revolution and the internet democratized information.

In Frazier v. Heebe, this Supreme Court summarized the question for decision: "The question for decision is whether a United States District Court may require that applicants for general admission to its bar either reside or maintain an office in the State where that court sits." Id. at 642-43. This is analogous to the question for decision presented in this case, i.e. "Whether a United States District Court may require that applicants for general admission to its bar be licensed in the State where that court sits." This Supreme Court answered in the negative. The decision below answers in the positive. The decision below, in effect, reverses this Supreme Court without analyzing this Court's decision.

In Frazier v. Heebe, the petitioner attorney challenged local general bar admission rules of the Eastern District of Louisiana. Initially, the attorney filed his petition in the Court of Appeals for a writ, requesting the rules be invalidated. The Fifth Circuit Court of Appeals remanded the case and held that it had to be first filed in the District Court to obtain an appealable judgment. Matter of Frazier, 594 F. Supp. 1173, 1176 (E.D. La 1984). All of the judges of the Eastern District of Louisiana then recused themselves, and a judge from another district was assigned the case. Ibid. The District Court and the Fifth Circuit upheld the challenged attorney

admission rule. This Court, however, reversed and held the District Court was not empowered to adopt Rules requiring members of the Louisiana Bar who apply for admission to its bar to live, or maintain an office, in Louisiana. This Court held the location of a lawyer's office simply has nothing to do with his or her intellectual ability or experience in litigating cases in Federal District Court. Frazier v. Heebe, *supra*, 482 U.S. 641, 650 (1987).

In reaching that decision, filed before Congress substantially rewrote the Rules Enabling Act in 1988, this Court exercised its supervisory powers and applied a heightened scrutiny "irrational and unnecessary" standard of review, rather than the strict scrutiny applied in Piper. "Irrational and unnecessary" equals the conjunctive rational and necessary. This Court entered other legal conclusions to justify reversal, Id. at 646-49, petitioners warrant are apposite to this proceeding the Court below concealed, such as: (i) there is no reason to believe that in-state attorneys are any more competent than out-of-state attorneys; (ii) there is no need for a blanket rule that denies all nonresident attorneys admission to a district court bar; (iii) modern communication systems make it possible to minimize unavailability; (iv) there is no link between residency within a state and proximity to a courthouse, Id. at 650; (v) pro hac vice admission is not a viable alternative because it does not allow nonresident attorneys to practice on the same terms as resident members of the bar, Id. at 650-51; (vi) Such (pro hac vice) association imposes a financial and administrative burden on nonresident counsel. Ibid.

This Supreme Court further, in footnote 7, provided other relevant contextual background and stated:

> Rules that discriminate against nonresident attorneys are even more difficult to justify in the context of federal-court practice than they are in the area of state-court practice, where laws and procedures may differ substantially from State to State. See Comisky & Patterson, The Case for a Federally Created

> National Bar by Rule or by Legislation, 55 Temp. L. Q. 945. 960-964 (1982). There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries. See Simonelli, State Regulation of a Federal License to Practice Law, 56 N.Y. State Bar J. 15 (May 1984). The Court's supervisory power over federal courts allows the Court to intervene to protect the integrity of the federal system, while its authority over state-court bars is limited to enforcing federal constitutional requirements. Because of these differences, the Court has repeatedly emphasized, for example, that disqualification from membership from a state bar does not necessarily lead to disqualification from a federal bar. 482 U.S. at 647 n. 7.

This case is locally unpopular because United States judges by definition are honorable. Opposition to their authority is perceived as *a prior* dishonorable.

Petitioners include the National Association for the Advancement of Multijurisdiction Practice, a nonprofit public benefit corporation. The NAAMJP has as its political purpose to engage in expressive association, and to petition the government for redress of grievances, on behalf of its members and itself as an association. See 49a-53a Declaration of Kenneth Owen, Esq., an officer and director of NAAMJP.

Petitioner NAAMJP is injured because it is barred by the challenged "minefield" of inconsistent local rules from filing this exact same lawsuit on behalf of its members in the Central District of California, and the District of Columbia, and in numerous other courts, because of local attorney *general* admission rules that categorically, regardless of individual merit or federal practice experience, deny general admission privileges to out-of-state attorneys.

Petitioner John F. O'Rourke, Esq. is a Vietnam Veteran, an award winning engineer, and a federal practice expert specializing in patent law. See 21a-37a Declaration of John F. O'Rourke. Petitioner is admitted to practice before the United States Patent and Trademark Office, and numerous other state and federal courts. Petitioner's patent practice is national and international. Petitioner alleges he has sustained concrete injuries to his professional practice and career, as a direct result of the patchwork of local federal district court admission rules.

Patent law is a federal practice specialty that is not tested on any State's bar exam. Nevertheless, petitioner is categorically ineligible for general admission to the bar of the federal district courts in California because he is not a member of the State Bar of California, and categorically disqualified for *pro hac vice* admission under the local rules because he lives and works in California. Petitioner alleges he is injured in his employment opportunities, in California and elsewhere, because he is qualified to be an expert witness on various intellectual property and scientific litigation cases filed in the federal district courts, but categorically and arbitrarily denied the right to act as counsel in these same cases; while attorneys that are not admitted to the patent bar are categorically eligible to serve as counsel in these intellectual property and scientific litigation cases in the federal district courts.

Petitioner Alan Ellis, Esq. is a former editor of the *Villanova Law Review*. See 38a-46a Declaration of Alan Ellis. He has clerked for federal judges. He is a former President of the National Association of Criminal Defense Lawyers. He has a national federal criminal practice, and he writes monthly columns for the American Bar Association on federal criminal sentencing. Petitioner is the co-author of the Federal *Prison Guidebook*, the *Federal Sentencing Guidebook*, and the *Federal Post Conviction Guidebook*.

Petitioner Alan Ellis alleges it would be either impossible or extraordinarily burdensome to conduct a

national criminal federal practice if the federal law specialist was required to be admitted in every single state in which there is a federal district court. Petitioner alleges the prohibitive costs would far outweigh the benefit because State law has virtually nothing to do with his federal criminal practice specialty. Petitioner alleges this increased cost interferes with the public's increased demand for specialized legal services, and puts him at a competitive disadvantage. Petitioner alleges there is no corresponding benefit by the challenged local rules because State bar examinations do not test his specialized area of federal practice, including habeas and federal sentencing guidelines. Petitioner alleges the local rules also handicap the Courts because expert federal practice specialists, because of their experience, can make the Court's job easier. Petitioner alleges regardless of where he practices that he is still subject to reciprocal discipline, the State's Rules of Professional Conduct, and the federal court's Rules of Professional Conduct.[1] Petitioner alleges that if he is qualified for *pro hac vice* admission then he is qualified for general admission.[2]

---

[1] The law is clear that a State has ethical jurisdiction over all of its attorneys regardless of where they work. See U.S. v. Ferguson, 54 F.3d 825 (D.C. Cir. 1995)(holding New Mexico ethics rule applies to a licensed New Mexico attorney working as an Assistant U.S. Attorney in Washington, D.C.)

[2] *See* New York County Lawyers' Association Report Of The Committee On The Federal Courts On Pro hac vice Admissions To the Federal Courts 169 F.R.D. 390, 415 (1997)

> Conclusion: Stunning changes in technology and the increasingly national scope of federal practice have made the Association Rule an expensive and burdensome anachronism. Too many litigants and attorneys no longer recall the original reasons for the rule which now appears to many to be nothing more than judicially-sanctioned feather-bedding. These 'territorial restrictions on interdistrict competition among attorneys' which unjustifiably increase the cost of legal services to consumers by compelling unnecessary retention of additional lawyers must be eliminated. The Association Rule gives rise to

Petitioner further alleges injury because one out of eight Americans lives in California. Petitioner further alleges concrete injury because he has been disqualified from *pro hac vice* admission in the California federal district court because he has a regional office in California.[3]

Petitioner Donald Harris, Esq. is a Yale graduate and a resident of Ohio. He has a national federal bankruptcy practice. Petitioner alleges that he has been injured by his inability to practice in other Federal Bankruptcy Courts. Bankruptcy law is also not tested on any State's bar examination. See 47a-48a Declaration of Donald Harris.

Petitioners, in addition to their "as applied" challenge, further present a facial challenge. Petitioners maintain they are entitled to assert the First Amendment rights to free speech, expressive association, and petition rights of every American under the overbreadth doctrine.

Petitioners submitted 25 Exhibits in support of their Motion for Preliminary and Permanent Injunction and Declaratory Judgment. See Appendix p. 12a-20a listing and summarizing the Exhibits filed in the trial Court. This summary was filed in the trial Court. All 25 exhibits filed in this matter of public concern in a public forum are downloadable in full from PACER 24-7. These Exhibits were submitted as evidence without opposing counsel objection. The Order below consistent with the code of silence adopted conceals each and every exhibit.

The Order below conceals the undisputed fact the American Bar Association in 1995 has officially recommended that the challenged "local rules," which restrict practice privileges to lawyers who are admitted to the state

---

criticism by the general public about the legal process and clearly injures the image of both the bench and bar. For too long the legal community has not heeded the need for change. The case for eliminating the Association Rule is presently overwhelming. The time to act is now.

[3] See 40a ¶ 16.

bar in which the district courts sits — should be eliminated. The American Bar Association concluded: "Given the global nature of law practice today, parochial local rules are inefficient, unduly costly to clients and/or lawyers and anti-competitive." App. 65a-68a.

The Order below conceals facts about the American Bar Association's MJP Commission's (2002) findings and recommendations. This seismic shift in paradigm undermines all prior attorney admission case law as to what is reasonable and rational. This MJP Commission was staffed by leading lawyers from around our nation. Harriet Miers was the Chair until she stepped down to be President Bush's White House counsel. The ABA MJP Commission held nationwide open hearings and received comments from virtually every arm of the bar concerning reciprocal admission and discipline, among other matters.

The ABA MJP Commission, in its report Client Needs in the 21st Century, and based on a careful and meticulous study, determined the best method to measure competence is actual experience practicing law. See www.abanet.org/cpr/mjp **Report 201G** "RESOLVED, that the American Bar Association adopts the proposed *Model Rule on Admission by Motion*, dated August 2002." See App. 55a-66a.

The State Conference of Chief Justices has endorsed this ABA MJP Commission Report. See App. 54a. The ABA MJP web site indicates that 35 states have adopted admission on motion. The United States Judicial Conference corroborates the ABA's conclusion and affirms that experience is the best measure of competence.[4]

---

[4] "No one has yet devised an examination which will test one's ability to be a courtroom advocate." Report and Tentative Recommendations of the Committee to Practice in the Federal Courts in the Judicial Conference of the United States. 79 F.R.D. 187, 196. "Lawyers with previous trial experience are much more likely to turn in very good performances, and it permits the inference that experience improves the quality of trial performance." Id. at 196. There is a correlation between the quality of

The American Bar Association recommended reciprocal admission without taking another bar examination in this 21st Century for several obvious reasons.

Susan M. Case, Ph.D. is the Director of Testing for the National Conference of Bar Examiners. Dr. Case writes, "Testing for licensure is intended to provide evidence that an individual possess sufficient knowledge and skills necessary for *entry level professional practice*." See Susan M. Case, p. 27 The Bar Examiner (November 2005).

The ABA concluded, what could be a better "objective" evidence of "entry level competence" then tangible experience as a practicing attorney? Lawyers and judges like fine wine get better with age. One cannot become an expert without experience.

Additionally, if a layman is presumed to know the law, or is able to look it up on the internet, it is not rational to presume an experienced federal practice expert in the 21st Century cannot. If a layman is presumed to be qualified to represent himself or choose his own counsel, it is not rational to presume an experienced attorney is not qualified. If all men are created equal, it is not rational to categorically presume the attorneys of any state are created unequal, or will act unethically.

Equally important, these American Bar Association conclusions have been affirmed by this Court. The norm under the Privileges and Immunities Clause is comity, and American attorneys as citizens qualify for the norm of reciprocal admission on motion. Supreme Court of Virginia v. Friedman, *supra*, 487 U.S. at 67. See Frazier v. Heebe, *supra*, 482 U.S. 641, 650 (1987)(held the location of a lawyer's office simply has nothing to do with his or her

---

trial performance and the prior experience of the attorneys evaluated. 83 F.R.D. at 222.

intellectual ability or experience in litigating cases in Federal District Court.)

The Order below further conceals the facts that "A National Action Plan on Lawyer Conduct and Professionalism" (Adopted by the Conference of Chief Justices January 21, 1999), declares "National Legal practice in multiple jurisdictions increasingly is the rule rather than the exception, particularly given improvements in communication and transportation technology. The appellate courts of highest jurisdiction should not only provide leadership and coordination of professionalism and legal ethics programs within their own states, but also should encourage interstate cooperation." See 17a.

The Order below conceals the fact "local" federal district court rules governing bar admission are according to U.S. Judicial Conference study a "minefield of inconsistency."[5] Marie Leary of the Federal Judicial Center prepared an extensive report entitled "Eligibility Requirements for, and Restrictions on, Practice before the Federal District Court," November 7, 1995, ("Leary Report") *Working Papers of the Committee on Rules and of Practice and Procedure: Special Studies of Federal Rules Governing Attorney Conduct* 125-182 (Administrative Office of the United States Courts 1997). This report is quoted and referenced in Moore's Federal Practice, *infra*.

Moore's Federal Practice 3rd Ed., Judith A. McMorrow and Daniel R. Coquillette, "The Federal Law of Attorney Conduct," § 801.20(3) Criteria for General Admission, p. 801-56 states:

> According to the "Leary Report"
> This extraordinary diversity of bar requirements was almost completely random in terms of characteristics of the district courts, with rural districts and urban

[5] Moore's Federal Practice 3rd Ed., Judith A. McMorrow and Daniel R. Coquillette, "The Federal Law of Attorney Conduct," § 801.20(7) p. 801-59.

> districts; districts on tropical islands; western, southern, northern and eastern districts; and large and small districts all showing no particular predilection for any model. The primary justification for divergent local rules, special needs inherent to a particular district, appeared to be almost completely lacking. Indeed, because many of these local rules were adopted before the 1988 revision to 28 U.S.C. § 2071(b) requiring "appropriate public notice and comment," there is little in the record of why individual courts chose the model they did.

These challenged general admission "local" rules provide a hodge-podge that is even more burdensome ten years after the "Leary Report" because of the ABA MJP Commissions recommendation for admission on motion for experienced attorneys that increases the inconsistent minefield by putting federal First Amendment protected wine in State segregationist bottles.

The Order below conceals the Exhibit evidence submitted that there is an enormous unmet need for legal services because citizens cannot afford to hire lawyers. The Legal Aid Services in a national study titled "Documenting the Justice Gap in America," reports that legal aid cannot meet the needs of 80% of the people that it serves. The Presiding Judge of the Los Angeles Superior Court stated that of the 2.7 million cases heard last year in the Los Angeles Superior Court system, 2 million featured at least one party acting as his or her own counsel. See App. 13a. Fewer and fewer people are able to afford legal services because of reported partners profits of over a $1,000,000 per year and first year associate salaries in excess of $135,000. See App. 13a-14a.

The Order below conceals the indisputable fact the National Conference of Bar Examiners Admission on Motion Statistics report that 27,255 attorneys were admitted to another State's Bar on Motion in between 1999-2004. These 27,255 "mainstream" attorneys admitted on motion to the

States were categorically ineligible for *general* admission privileges to the bar regardless of individual merit under the "extremist" "local" rules of the respondent United States District Courts for the Districts of New Jersey and California. See App. 18a. The States of California and New Jersey are in the minority of States that have rejected the American Bar Association's recommendation for admission on motion. These States in calibrating the scales of justice are more concerned with protecting their own lawyer's monopoly than the public.

The Court below, by concealing the 25 Exhibits submitted without objection, and this Court's precedent on attorney admission cases, did not carry out his judicial duty in this First Amendment case to engage in a searching, independent factual review of the full record to ensure "that the judgment does not constitute a forbidden intrusion on the field of free expression." Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 499 (1984) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 284-286 (1964)). There is no proof in the record below the Court engaged in any review.

The Order below also presents false information as if it were true by citing case law as authority for propositions not decided in the case cited. None of the lower court cases cited by the trial Court decided the legal questions presented in this case as to the validity of the challenged local rules under: (i) 28 U.SC. 332(d)(4) and 28 U.S.C. § 2072(b) as amended in 1988;[6] (ii) The First Amendment overbreadth

---

[6] Petitioners' counsel was the plaintiff in Giannini v. Real, 911 F.2d 354 (9th Cir. 1990) *cert. denied* 498 U.S. 1012, (1991). Counsel did not meet his burden of persuasion in that case that raised a local rule challenge. The facts developed and the legal arguments have changed dramatically since that decision over 16 years ago. This Court's decision in Saenz v. Roe, 526 U.S. 489, 500 (1999) extending the reach of the Privileges and Immunities Clause undermines the core of the Ninth Circuit decision.

More particularly, as to the local rule challenge, that decision was facially flawed on the day it was decided. It was decided on May 8, 1990, yet it cites the outdated law, as it existed prior to the 1988

doctrine, viewpoint discrimination, and content discrimination; and (iii) the Supremacy Clause. One can carefully search every published decision cited by the trial Court and not find any decision wherein any of the legal arguments submitted here were presented or decided by any other court.

REASONS FOR GRANTING THE PETITION

1. The Court Should Grant This Writ Under Either Rule 11 or Rule 20 Because No Man Can Be a Judge In His Own Case, and This Court Has a Supervisory Responsibility Over the Challenged Local Rules

This Court is the ultimate supervisor of the local rules. This supervisory duty should not be delegated to those charged with breach of supervisory duty. This would be equivalent to letting a party be a judge and a judge be a party.

Initially, this case raises a pure question of law. Petitioners assert their substantive and Fifth Amendment right to a fair and impartial federal judge is institutionally compromised anytime a federal judge gives enhanced full faith and credit to one State's bar admission polices and judicial records, and zero credit to the bar admission policies

---

amendments to 28 U.S.C. § 2071-72. See 911 F.2d at 360 where the Ninth Circuit, analyzes the issue under the Rules of the Supreme Court. Compare that to 28 U.S.C.A. § 2071 and the immediately following *Commentary on 1988 Revision* by the reporter David D. Siegel, p. 521;

> .. .in the 1988 amendment and its reference to the Supreme Court in the second sentence was struck out and a reference to § 2072 substituted. The change . . .adopted with the district courts primarily in mind, requires rules promulgated on the authority of § 2071 to conform to the requirements of § 2072 instead of merely to rules promulgated by the Supreme Court.

and judicial records of 49 other states. Petitioners assert this is an unconstitutional condition.

Additionally, the Fifth Amendment is a substantive right protected by 28 U.S.C. § 2072(b)(such rules shall not abridge, enlarge or modify any substantive right). There are two components of due process, a *substantive* right to due process (similar to equal protection), and a *procedural* due process right to a fair and impartial judge. Both of these *substantive* and *procedural* rights are violated in this case.

Due process counsels that no man shall be a judge in his own case. "(N)o man ought certainly to be a judge in his own cause, or in any cause, in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different states and their citizens." See Hamilton, Federalist No. 80, p. 414 (Gideon Edition).

In this case, there is a *procedural* due process violation because the petitioners' right to a disinterested and neutral judge has been and is presently being compromised. The District Court below held his own Eastern District of Pennsylvania's local attorney admission rules were lawful. The District Judge was the judge in his own case. This procedural due process violation will not be cured on appeal because these judges will also be deciding their own case.

There are eleven active judges on the Third Circuit. Five of them are named defendants in this case because of their joint role as members of the Judicial Conference and judges on the Third Circuit Court of Appeals. A judge shall disqualify himself where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1). The respondent Third Circuit judges by not abrogating the challenged local rules, with notice of petitioners' claims, have expressed a negative opinion concerning the merits of these claims. The remaining judges on the Third Circuit are not disinterested. They are biased

and prejudiced because they have close friends that are parties, that they share confidential communications and advice on an every day basis. This disqualification for bias and prejudice under 28 U.S.C. § 455(b)(1) and (3) cannot be waived under 28 U.S.C. § 455(e).

In contrast, the petitioners below were not even permitted in the courtroom, in a case where they were petitioning for the right to appear in the courtroom.

This is also not a case where judges from other Courts of Appeals can be assigned to hear this case because judges in other circuits are named as defendants, and it is alleged they too have violated the standards set forth in 28 U.S.C. § 2072(b).

This Article III Court conflict of interest is irreparable because the Executive Branch respondent Attorney General and Department of Justice also have a conflict of interest. They have on the one hand, a duty to defend government officials charged with breach of duty, and on the other hand, a duty to impartially enforce the law. These indivisible duties are inextricably intertwined beyond separation in this case.[7] This separation of powers violation can only be remedied in this Court.

Thus, petitioners' substantive and procedural right to due process and a disinterested fact-finder has been

---

[7] For example, the Department of Justice refused to provide the initial mandatory disclosures or provide any discovery. Petitioners in discovery sought to elicit relevant testimony under oath from the Honorable Alberto R. Gonzales relevant to the issues in this case, such as: (i) Are attorneys from Texas not competent to practice federal law outside of the State in which they are licensed? (ii) Are former federal law clerks and Department of Justice lawyers not competent to practice federal law after leaving federal employment?; (iii) Should American lawyers and citizens have unequal constitutional rights in petitioning the federal district court?; (iv) Did the American Bar Association MJP Commission get it wrong?; (v) Should this MJP Commission Report be ignored by the federal judiciary?

irreparably abridged and modified. Petitioners concurrently with filing this Writ Petition are by formal motion requesting the judges on the Third Circuit to disqualify themselves. Out-of-state attorneys do not present a clear and present danger that would warrant a prior restraint on their First and Fifth Amendment substantive rights. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976).

There is no decision this Court could enter that would be more welcome by the legal profession and the people then the removal of this local rule pox. There is no decision this Court could enter and be more fitting in this Court's first term under Chief Justice Roberts then the abrogation of this archaic remnant from the separate but equal era.

Petitioners accordingly, and for legal reasons that will be argued below, request a Writ of Mandamus and Prohibition — abrogating federal district court "local" rules that deny general bar admission privileges to attorneys not licensed in the forum State.

2. The Subject Local Rules Are Inconsistent With Each Other and Violate 28 U.S.C. § 2072(b)

The respondent Third Circuit Judicial Council, as noted above, has a supervisory responsibility to review all District Court "local" rules within the circuit to ensure both their consistency (shall be consistent) under 28 U.S.C. § 332 (d)(4), and in conformity with 28 U.S.C. § 2072(b)(such rules shall not abridge, enlarge or modify any substantive right).

The local rules are not consistent as is required by 28 U.S.C. § 332 (d)(4). The only thing consistent is their inconsistency. This inconsistency on its face violates 28 U.S.C. 2072(b). District of New Jersey Local Rule 101(b) limits general admission to New Jersey licensed lawyers. New Jersey has rejected the ABA Model Rule for admission on motion. An out-of-state attorney is compelled to accept the markedly inferior *pro hac vice* admission available, and has to pay annual bar dues to the State of New Jersey as long

as he is appearing in the federal case for this second class status. Local Rule 101(c). Moreover, her client has to pay two lawyers in the District of New Jersey to perform services that could be more efficiently and expeditiously performed by one federal practice specialist.

In contrast, with the NJ local rule licensing fees payable to the State of New Jersey Lawyers' Fund for Client Protection for second class federal privileges — a licensing tax that is not authorized by Congress — Western District of Pennsylvania LR 83.2.1 C authorizes general admission to "Any person who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States district court, may be admitted to practice before the bar of this court." Approximately one third of the federal district courts have admission rules paralleling the Western District of Pennsylvania.

In further contrast, the Eastern District of Pennsylvania limits general admission to Pennsylvania licensed attorneys. The State of Pennsylvania, however, has adopted Pennsylvania Bar Admission Rule 204, an admission on motion provision for States that provide reciprocity to Pennsylvania attorneys. Attorneys from 18 states are categorically denied admission on motion to the Pennsylvania Supreme Court because these states do not grant Keystone State lawyers the same reciprocal privilege. Thus, these lawyers are vicariously disqualified from general admission on motion in the Eastern District of Pennsylvania, based on the State of Pennsylvania's "horse-trading" incorporated by the local rules of the Eastern District of Pennsylvania.

The right to counsel is further a substantive right. The local rules are inconsistent with FRAP 46 and Supreme Court Rule 5, and they violate that substantive right because they enlarge the rights of forum state attorneys to appear as counsel, and they modify and abridge the rights of non-forum

state attorneys to serve as counsel. The sacred rights to counsel of all America citizens are, therefore, modified by these balkanized local rules.

Likewise, 5 U.S.C. § 500(b) is an Act of Congress that provides all licensed American attorneys in good standing are authorized to appear as counsel before federal administrative agencies. The challenged local rules are inconsistent with 5 U.S.C. § 500(b) because an attorney is qualified by this Act of Congress to serve as counsel for a party in the federal administrative agencies, and by other Congressional Acts in the federal appellate courts (FRAP 46), the U.S. Supreme Court (Rule 5) – but not under the challenged local rules in the District Courts.

These challenged local rules should be consistent with FRAP 46 and 5 U.S.C. § 500(b). The mischief from this minefield of balkanized local rules is not a more perfect Union but "a house divided against itself."

3. **The Challenged General Admission Local Rules Violate the First Amendment and 28 U.S.C. § 2072(b)**

a. Violation of the Overbreadth Doctrine

Laws that sweep within its ambit protected activities that constitute an exercise of protected expressive or associational rights are subject to the overbreadth doctrine. Thomhill v. Alabama, 310 U.S. 88 (1940). In First Amendment overbreadth cases, courts allow litigants to "challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court." Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620, 634 (1980). This is because of the "possibility that protected speech or associative activities may be inhibited by the overly broad reach of the statute." Ibid. "(W)hen there is a danger of chilling free speech, . . . society's interest in having the statute challenged may outweigh the prudential considerations that normally counsel against third-party standing." Sec'y of State v. Joseph H. Munson Co., 467 U.S. 947, 956 (1984).

The First Amendment rights are not subject to a majority vote. As stated by Justice Robert Jackson, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." Board of Education v. Barnette, 319 U.S 624, 638 (1943).

Local rules, however, by definition are adopted by the vote of the majority of the judges in a district. The district judges, whether conscious or unconscious because they didn't think of it, voted in their local rules to provide the forum State with a blank check on who may exercise national rights secured by the Bill of Rights. This standard-less delegation of federal duty to the forum state constitutes a gross miscarriage of federal jurisdiction. See Nguyen v. United States 539 U.S. 69 (2003)(held a federal court of appeals was reversed for merely having an Article IV judge sitting on a panel. This Supreme Court concluded that only Article III judges were authorized to decide the case).

The First Amendment attempts to secure "the widest possible dissemination of information from diverse and antagonistic sources." New York Times v. Sullivan, 376 U.S. 254, 266 (1964). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Id. at 276.

The challenged local rules are an enormous overbroad prior restraint on freedoms that are at the core of "a profound national commitment to debate on public issues that should be uninhibited, robust, and wide open." Ibid. Petitioners and other American citizens' First Amendment freedoms to

advocate, assembly, and petition are being suppressed across our Union and in many cases suffocated by this prior restraint. If Thomas Jefferson, Alexander Hamilton, and many of our Founding Fathers were alive today, they would be categorically disqualified from general bar admission by the local rules challenged in this case.

These challenged rules are markedly over-inclusive. They enlarge local attorneys' substantive rights. Novice forum state attorneys, who have never once filed a pleading in the federal court, are routinely and categorically granted general bar admission privileges.

Petitioner federal practice specialists are categorically excluded. Likewise, an out-of-state citizen hauled into federal court is presumed to know the law and is authorized to represent himself, but his out-of-state attorney is presumed ignorant of the law and disqualified. It turns logic and common sense upside down to presume a layman knows the law, and experienced federal practice experts from outside the forum state do not. The challenged general admission local rules are without question facially overbroad.

When a court decides to impose a speech-restrictive injunction, the conclusions it reaches must be "supported by findings that adequately disclose the[ir] evidentiary basis . . ., that carefully identify the impact of [the defendants'] unlawful conduct, and that recognize the importance of avoiding the imposition of punishment for constitutionally protected activity." NAACP v. Claiborne Hardware Co., 458 U.S. 886, 933-34 (1982). There is neither an evidentiary basis nor a judicial finding of unlawful conduct, as the "Leary Report" verifies, against non-forum state attorneys that would serve to justify the suppression of their First Amendment liberties via the "local" rules prior restraint.

Moreover, the respondents cannot justify this significant federal restraint and discrimination in a designated public forum. They do not have a compelling need because federal law and procedure are uniform. The challenged local rules are not narrowly tailored because the U.S. Supreme

Court, U.S. Courts of Appeals, and approximately 1/3 of the U.S. District Courts do not censor out-of-state attorneys or put up fences around their courtrooms. Monopoly protection is not a legitimate government interest.[8] Moreover, reciprocal admission on motion is the norm in 35 states. Reciprocal discipline is the norm in both the State and federal courts.

Petitioners maintain the District Courts can protect their interests in the administration of justice process through "less restrictive means" than categorical exclusion of citizen-attorneys licensed in other states. The present status quo and enforcement of the challenged local rules is a self-evident violation of the overbreadth doctrine.

b. The Challenged General Admission Local Rules Constitute Facial Viewpoint Discrimination

These challenged "local attorney" only admission rules are quintessential viewpoint discrimination. Only "local attorneys" are permitted to freely speak, freely represent their client and engage in expressive association, or freely petition for redress of grievances in a designated national public forum on matters of public concern.

Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or it's content. Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

---

[8] *See* FTC v. Superior Court Trial Lawyers Assn, 493 U.S. 411 (1989)

> "(U)ltimately competition will produce not only lower prices, but also better goods and services.' National Society of Professional Engineers v. United States, 435 S. 679, 695 (1978). This judgment 'recognizes that all elements of a bargain — quality, service, safety, and durability — and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.'" Trial Lawyers, *supra*, 493 U.S. at 423.
>
> . . .
>
> "That is equally so when the quality of legal advocacy rather, than engineering design, is at issue." Id. at 424.

A regulation that denies one group of citizens the right to address a selected audience on controversial issues of public policy is plainly viewpoint discrimination. Consolidated Edison Co. v. Public Serv. Comn'n, 447 U.S. 530, 546 (1980).

Viewpoint discrimination is a particularly egregious form of content discrimination. It is presumptively unconstitutional. Our government is prohibited from favoring one viewpoint over another. See Rosenberger v. Rector And Visitors of Univ. of VA, 515 U.S. 819 (1995) "To permit one side of a debatable public question to have a monopoly in expressing its views . . . is the antithesis of constitutional guarantees." Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n, 429 U.S. 167, 175-176 (1976). "A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official." Lakewood v. Plain Dealer Publishing Co, 486 U.S. 750, 763 (1988).[9]

---

[9] Scientific tests conducted by Dr. Gary Klein demonstrate licensing officials are the least qualified to determine competence. See 72a.74a. Gary Klein has spent his career studying how people make decisions for the United States Military and other institutions. In Klein, Sources of Power (The MIT Press 1999) *Chapter 10 The Power to See the Invisible*, Dr. Klein explains "There are many things experts can see that are invisible to everyone else: (i) Patterns that novices do not notice; (ii) Anomalies — events that did not happen and other violations of expectancies; (iii) The big picture (situation awareness); (iv) The way things work; (v) Opportunities and improvisations; (vi) Events that either already happened (the past) or are going to happen (the future); (vii) Differences that are too small for novices to detect; (viii) Their own limitations." Id. at 148-49. Each of these is virtually invisible to novices. Dr. Klein sees a relationship between expertise and age, and "the accumulation of experience does not weigh people down; it lightens them up." Id. at 147. Dr. Klein's test results further show that experts are generally not affected by extreme time pressure and their first reaction is almost always based on pattern recognition and the right one. Id. at 175.

c. The Challenged General Admission Local Rules Violate the First Amendment Right to Free Speech and Constitute Content Discrimination

A law is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content or subject matter of their speech. Simon & Schuster v. Crime Victims Bd., *supra*, 502 U.S. 105 (1991).

In Republican Party of Minn. v. White, 536 U.S. 765 (2002), the Minnesota Supreme Court adopted a canon of judicial conduct that prohibited a candidate for judicial office from announcing his or her views on disputed legal or political issues. The question presented was whether the First Amendment permits a State Supreme Court to prohibit candidates for judicial office in the State from announcing their views on disputed legal and political issues. This Court invalidated the judicial canon. This Supreme Court held the "announce clause" burdened speech based on its "content" and it burdened "a category of speech" that is at the core of the First Amendment.

This Court's First Amendment and Privileges and Immunities Clause case law makes clear that if judges seeking election have First Amendment rights, experienced attorneys seeking another federal district court admission have First Amendment rights. The defendants' local rules that require the petitioner out-of-state licensed attorneys in

---

In other words, where a novice is paralyzed by uncertainty and the need for detailed analysis, an expert knows exactly what to do without even consciously thinking about it. These substantive differences between novices and expert underlie the different procedural rules for the admissibility of testimony in the Federal Rules of Evidence 700 series. The local rules modify, enlarge, and turn the Constitution upside down by categorically presuming novice forum state attorneys are experts and categorically presuming expert attorneys from outside the forum are novices.

good standing, announce once again their views to local State licensing officials, as a condition predicate to again obtain federal admission, is content discrimination and it burdens a category of protected speech. Defendants' local rules cannot survive strict scrutiny standard of review held applicable in Republican Party of Minn. v. White, *supra*.

These challenged local rules which vicariously adopt by reference, and authorize every State official in every village and hamlet, to fix who is authorized to petition for redress of grievances in the United States District Court, serve to reinforce the pestilential breath of local party faction. The result is the cherished First Amendment freedoms of the American people, which need breathing room to survive in the 21st Century as well as the 18th Century, are abridged, modified, and enlarged.

4. The Challenged General Admission Local Rules Violate the Supremacy Clause and 28 U.S.C. § 2072(b)

In Sperry v. Florida, 373 U.S. 379 (1963), the petitioner was not a lawyer, but he had been admitted to the membership of the Board of Patents. The Florida Bar sued in the Supreme Court of Florida to enjoin the performance of these and other specified acts within the State, contending that they constituted unauthorized practice of law. The Florida Supreme Court affirmed. This Court reversed finding a violation of the Supremacy Clause.

Here, the challenged local federal rules, by piggy-backing state law that has nothing to do with federal law, including patent law, are directly usurping a field occupied by Congress. Congress has not imposed any additional licensing conditions on petitioners under FRAP 46 or Supreme Court Rule 5. If the State cannot occupy these federal fields, it follows local district court rules cannot provide the forum State with a blank check and adopt state law under the guise of local rule-making powers. See Carey & McClellan, editors, The Federalist (The Gideon Edition), Hamilton No. 80, p. 412 ("The peace of the WHOLE ought not to be left at the disposal of a PART.")

CONCLUSION

Petitioners in view of the foregoing request a Writ of Mandamus and Prohibition abrogating federal district court "local" rules that deny general bar admission privileges to attorneys not licensed in the forum State. These challenged local rules should be consistent with FRAP 46 and 5 U.S.C. § 500(b).

Petitioners alternatively request a Writ of Certiorari to the Third Circuit.

Dated: April 28, 2006

Respectfully submitted,
By: /s/ Joseph Robert Giannini
Joseph Robert Giannini, Esq.
PA SB # 38814
Counsel for Petitioners
925 S. Westgate Ave. #102
Los Angeles, CA 90049
Phone 310 442 9386
Fax 310 826 7989
Email: j.giannini@verizon.net

(any footnotes trail end of each document)
Filed 3/23/06

Civil Action No.
05-cv- 5081

UNITED STATES DISTRICT COURT FOR FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAAMJP et al.

v.

George W. Bush, et. al

ORDER

Plaintiffs, the National Association for the Advancement of Multijurisdictional Practice ("NAAMJP"), a nonprofit organization directed by Joseph Giannini (plaintiffs' counsel in this case), John O'Rourke, Alan Ellis, and Donald Harris filed a declaratory judgment complaint and motion for a preliminary and permanent injunction on September 23, 2005 alleging that numerous defendants, including President George W. Bush, Attorney General Alberto Gonzalez, the Department of Justice, various Judges from the United District Courts for the District of New Jersey,[1] Central District of California,[2] the members of the Ninth Circuit Judicial Council,[3] the members of the Third Circuit Judicial Council,[4] and the District of Columbia Judicial Council[5] violated 28 U.S.C. §§ 2071, 2072, and 332(4)(4) and numerous constitutional principles by failing to create

homogeneous local rules for admission to the bars of those jurisdictions. Plaintiffs filed an amended complaint on December 13, 2005 asserting class certification and stipulated to the voluntary dismissal of President Bush on January 26, 2006.

This is at least the third time that Giannini has brought such a claim before a district court. After failing the California Bar Examinations in July 1986 and February 1987, Giannini filed suit against the California Bar Examiners for denying his admission to practice in California even though he was licensed in Pennsylvania and New Jersey. See Giannini v. Comm. of Bar Examiners, 847 F.2d 1434 (9th Cir.1988). In that case, Giannini alleged that the California bar examination discriminated against out of state attorneys and violated the Privileges and Immunities Clause of Article IV, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the Commerce Clause of the United States Constitution. Id. The District Court dismissed his complaint and the Court of Appeals for the Ninth Circuit affirmed. Id.

Giannini then filed suit in the Central District of California against the California Supreme Court and the Justices of that Court, the Committee of Bar Examiners and the Committee's individual members, and the United States District Courts for the Central, Southern, and Eastern Districts of California and the individual judges of those Courts. See Giannini v. Real, 711 F. Supp. 992 (C.D. Cal. 1989) aff'd 911 F.2d 354 (9th Cir.1990). In that case, Giannini challenged the constitutionality of local district court rules requiring attorneys to pass California's state bar

examination before being admitted to practice in the United States District Courts for the Central, Eastern, and Southern Districts of California. Id. The District Court upheld the local rule as consistent with the rules, practices, and procedures of the Supreme Court, and specifically held that the local rule did not violate equal protection or due process, full faith and credit, or the right to travel and rejected Giannini's arguments under 28 U.S.C. § 2071. Id. The Court of Appeals for the Ninth Circuit affirmed the District Court's dismissal and found that Giannini's challenges did not pass constitutional muster and that the local rule did not violate the Privileges and Immunities Clause of Article IV, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, or the Commerce Clause of the United States Constitution. Id.fn6

Giannini subsequently filed an action in the Northern District of California against the California Supreme Court and that Court's Justices challenging the constitutionality of the California rule that limits pro hac vice admission to nonresidents licensed in other states. In dismissing Giannini's complaint, the District Court held that the rule did not violate the Free Speech Clause of Association Clause of the First Amendment, did not deny plaintiffs meaningful access to the Courts, was supported by a rational basis, and did not violate the Privilege and Immunities Clauses of Article Iv or the Fourteenth Amendment or the Commerce Clause. See Paciulian v. George, 38 F. Supp. 2d 1128 (N.D. Cal. 1999) aff'd 229 F.3d 1226 (9th Cir. 2000). The District Court further held that the action was filed for an improper purpose, warranting Rule 11 sanctions, and enjoined Giannini from filing future suits regarding

admission to the bar and regulation of the practice of law in California without leave of court. Id. In affirming the District Court, the Ninth Circuit Court of Appeals further held that plaintiffs did not have a protectable property interest in gaining pro hac vice status. Id.

Undeterred, Giannini filed another action in the Northern District of California against the Judges of the Northern District of California and the members of the Ninth Circuit Judicial Council contending that the Criminal Justice Act Plan's requirement that an applicant for membership on the District Court's indigent defense panel be a member of the California bar violated a variety of plaintiff s constitutional rights. See Russell v. Hug, No. 99-1104, 1999 WL 592195 (N.D. Cal. Aug. 3, 1999) aff'd 275 F.3d 812 (9th Cir. 2002). In dismissing Giannini's complaint, the District Court concluded that the state bar membership requirement does not arbitrarily discriminate against attorneys who do not pass the California bar, does not violate the principles of right and justice, does not violate Title VII, does not implicate or violate 28 U.S.C. §§ 2071-72, does not violate Executive Order 11478, does not violate the Free Speech or Associate Clauses of the First Amendment, is rationally related to a legitimate government interest, and does not violate the Due Process Clause. Id. In affirming the District Court, the Ninth Circuit Court of Appeals further held that the membership requirement is not a "rule" within the meaning of the statute governing rule-making power of federal courts, is not inconsistent with certain requirements under the statute setting forth requirements for counsel in federal death penalty cases, was not subject to notice and comment requirements of the statute governing orders of circuit judicial councils,

does not violate Fifth Amendment's Equal Protection Clause, does not violate either Article IV's or the Fourteenth Amendment's Privileges and Immunities Clauses, and does not infringe on plaintiff's First Amendment rights to speech, association, or petition in a public forum. Id.

Having failed in the District Courts of California and the Court of Appeals for the Ninth Circuit, Giannini attempts to retry the same issues here. His complaint will be dismissed for substantially the same reasons stated by those Courts. Plaintiffs' complaint is dismissed for the following preliminary reasons: (1) plaintiffs have failed to demonstrate how I have personal jurisdiction over many of the named defendants; (2) plaintiffs' pleadings do not comply with Federal Rule of Civil Procedure 8's "short and plain statement" requirement; and (3) plaintiffs have not complied properly with my Order of January 24, 2006 directing plaintiff to "address the questions whether I have jurisdiction to set aside the Local Rules of other Districts and why each defendant is a proper defendant in this case."

Plaintiffs' claims are also dismissed on the merits. Count I (Rules Enabling Act) is dismissed because the challenged local rules do not violate of 28 U.S.C. §§ 2071-72 & 332(4)(4) and are not inconsistent with Federal Rule of Civil Procedure 82, Federal Rule of Appellate Procedure 46, Supreme Court Rule 5, or 5 U.S.C. § 500(b). See Russell, 1999 WL 592195, at *5 aff'd 275 F.3d at 817-19; Giannini, 711 F. Supp. at 999 aff'd 911 F.2d at 360; Matter of Roberts, 682 F.2d 105,109 (3d Cir.1982). Similarly, Count IV (Article VI Supremacy Clause) is dismissed because the

challenged local rules are creatures of federal, not state, law and, thus, cannot conflict with or contradict federal law.

Counts II, III, VII, VIII, IX, and X (First Amendment freedoms of speech, association, and right to petition for redress of grievances) are dismissed because there is nothing in the challenged local rules that prevents plaintiffs from exercising their right to express themselves in any forum, associating together in any forum, petitioning for redress of perceived grievances in this suit, or appearing pro se in any forum. See Frazier v. Heebe, 482 U.S. 641, 645 (1987); Sup . Ct. of N.H. v. Piper, 470 U.S. 274, 283 n.16 (1985); Leis v. Flynt, 439 U.S. 438, 442 (1979). Moreover, because there is no general federal procedure for certifying the fitness of an attorney's ability to practice lawin the federal courts, it is rational for a district court to rely upon admission to the bar of the state in which it sits to determine such fitness. See Russell, 1999 WL 592195, at *7 aff'd 275 F.3d at 822-23; Paciulian, 38 F. Supp. 2d at 1137 aff'd 229 F.3d at 1230.

Count V (Privileges and Immunities Clause - comity) is dismissed because the Privileges and Immunities Clause is merely a limitation on the power of states to discriminate against nonresidents and does not implicate the ability of a federal court to make rules of practice and procedure. See Sup. Ct. of Va. v. Friedman, 487 U.S. 59, 65 (1988); Russell, 275 F.3d at 821; Paciulian, 38 F. Supp. 2d at 1142 aff'd 229 F.3d at 1229; Giannini, 911 F.2d at 357; Hawes v. Club Ecuestre El Comandante, 535 F.2d 140,145 (1 st Cir.1976); Manard, 701 F Supp. at 740-41. The

challenged local rules likewise do not violate the Full Faith and Credit Clause of Article IV because admission to one jurisdiction's bar does not confer the right to practice law in any other jurisdiction. See Leis, 439 U.S. at 443; Giannini, 711 F. Supp. at 1000 aff'd 911 F.2d at 360; Lark v. West, 182 F. Supp. 794, 796 (D.D.C.1960). Count VI (Privileges and Immunities Clause - right to travel) is also dismissed because the challenged local rules do not discriminate against nonresidents and this Clause applies only to state, not federal, restrictions. See Russell, 275 F.3d at 822; Paciulian, 229 F.3d at 1229; Hawkins v. Moss, 503 F.2d 1171,1178-79 (4th Cir.1974); Giannini, 711 F. Supp. at 1000.

Count XI (Sixth Amendment - right to counsel) is dismissed because there is no absolute right to counsel of one's choice. See Davis v. Stamler, 650 F.2d 477, 479-80 (1981) ("The sixth amendment does provide some protection for a criminal defendant's decision to select a particular attorney. The defendant must have a "fair opportunity" to secure counsel of his choice and "arbitrary dismissal" of the attorney chosen by the defendant is prohibited. It is clear, however, that the sixth amendment protection accorded to the defendant's choice of counsel must be balanced against the requirements of the fair and proper administration of justice, including the interests underlying the ethical standards governing the practice of law.") (internal citations omitted).

Counts XII and XIII (Fifth Amendment Equal Protection and Due Process Clauses) are dismissed because there is no fundamental right to practice law and the challenged local rules do not discriminate

against a suspect, or even quasi-suspect, class and are rationally related to a district court's legitimate interest in determining an applicant's fitness to practice law before the court. See Heller v. Doe, 509 U.S. 312, 319 (1993); Leis, 439 U.S. at 443; Schware v. Bd. of Bar Examiners, 353 U.S. 232, 239 (1957); Russell, 1999 WL 592195, at *7-8 aff'd 275 F.3d at 819-20; Paciulian, 38 F. Supp. 2d at 1139-41 aff'd 229 F.3d at 1230; Giannini, 711 F. Supp. at 999-1000 aff'd 911 F.2d at 357-58; Sestric v. Clark, 765 F.2d 655, 664 (7th Cir.1985); Maynard, 701 F. Supp. at 742-43; Lark, 182 F. Supp. at 796. Moreover, the challenged local rules cannot be considered to violate the Fifth Amendment's Takings Clause because admission to practice law in a particular jurisdiction does not confer a property right to practice in other jurisdictions. See Giannini, 911 F.2d at 359; Matter of Roberts, 682 F.2d at 107.

AND NOW, this 23rd day of March 2006, upon consideration of plaintiffs' complaint seeking declarative and injunctive relief, plaintiffs' motion for preliminary injunction, plaintiffs' amended complaint asserting class action status, defendants' opposition to plaintiffs' motion for preliminary and permanent injunctions and motion to dismiss, plaintiffs' supplemental argument with respect to the Sixth Amendment right to counsel, plaintiffs' reply, and plaintiffs' amended reply, and for the reasons set forth above, it is ORDERED as follows:

1. Plaintiffs' motion for preliminary and permanent injunctions is DENIED;

2. Defendants' motion to dismiss is GRANTED and plaintiffs' complaint is DISMISSED with respect to all claims;

3. Plaintiffs and plaintiffs' counsel are enjoined from filing any further papers with respect to the constitutionality of any jurisdiction's local rules of admission, practice, or procedure in the Eastern District of Pennsylvania without prior leave of Court. Leave of Court shall be forthcoming upon plaintiffs' or plaintiffs' counsel's demonstration through a properly filed petition that the proposed filing: (1) can survive a challenge under Federal Rule of Civil Procedure 12; (2) is not barred byprinciples of claim or issue preclusion; (3) is not repetitive or violative of this Court's order; and (4) is in compliance with Federal Rule of Civil Procedure 11;

4. Plaintiffs or plaintiffs' counsel shall attach a copy of this Order and Injunction to any such petition for leave of Court;

5. The Clerk of Court shall refuse to accept any submissions for filing from plaintiffs or plaintiffs' counsel relating to the subject matter of this action except petitions for leave of Court, unless such submissions for filing are accompanied by an order of this Court granting leave. In the event that plaintiffs or plaintiffs' counsel succeed in filing papers in violation of this Order, upon such notice, the Clerk of Court shall, under authority of this Court's Order, immediately and summarily strike the pleadings or filings.

s/ Thomas N. O'Neill, Jr.

THOMAS N. O' NEILL, JR, J.

Footnotes

fn1The Honorable John W. Bissell, Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katherine S. Hayden, Faith S. Hohchberg, Jose L. Linares, William J. Martini, Joel A. Pisano, and Alfred W. Wolfin.

fn2 The Honorable Consuelo B. Marshall, Percy Anderson, Terry J. Hatter, Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter, and Steven v. Wilson.

fn3The Honorable Mary M. Schroeder, Arthur Alarcon, Alex Kozinski, Kim McLane Wardlaw, Marsha Berzon, Andrew J. Kleinfield, B. Lynn Winmill, Stephen N. McNamee, Terry J. Hatter, Charles R. Breyer, Roger G. Strand.

fn4The Honorable Anthony J. Scirica, Dolores K. Sloviter, Jane R. Roth, Theodore A. McKee, Marjorie O. Rendell, James T. Giles, Thomas Vaniske, Sue L. Robinson, Doretta W. Ambrose, and Garret Brown, Jr.

fn5 The Honorable Douglas B. Ginsburg, David B. Sentelle, Karen Lecraft Henderson, A. Raymond Randolph, Judith W. Rogers, David S. Tatel, Merrick B. Garland, Thomas F. Hogan, Emmet G. Sullivan, James Robertson, Richard W. Roberts, Ellen Segal Huvelle, and Reggie B. Walton.

fn6See also McKenzie v. Rehnquist, 203 F.3d 52 (D.C. Cir.1999) (unpublished) (affirming dismissal of Giannini's challenges to the local rules in the California district courts and holding that Giannini lacked standing to challenge the local rules in other states because he failed to allege an actual injury); Morissette v. Yu, 21 F.3d 1114 (9th Cir.1994) (unpublished) (affirming dismissal of Giannini's complaint because his general attacks on the constitutionality of the form and content of the California bar examination are res judicata and upholding the district court's sanctions against Giannini for bringing a frivolous motion and making scandalous allegations based upon details from his dream); Mavnard v. U.S. Dist. Ct. for the C.D. Cal., 701 F. Supp. 738 (C.D. Cal. 1988) aff'd 951 F.2d 1581 (9th Cir.1990) (unpublished) (dismissing attorney's suit challenging constitutionality of local rule of Central District of California limiting admission to its bar to members of the California state bar because Article IV's Privileges and Immunities Clause, Commerce Clause, and the Fifth and Fourteenth Amendments were inapplicable and the rule was rationally related to a legitimate governmental interest).

Civil Action No.
05-cv- 5081 TON
CLASS ACTION

UNITED STATES DISTRICT COURT FOR FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAAMJP (National Association for the Advancement of Multijurisdiction Practice), John F. O'Rourke, Alan Ellis, Donald Harris.

Plaintiffs,

v.

Alberto R. Gonzales, et. al

PLAINTIFFS' EXHIBIT LIST

Exhibit A John F. O' Rourke,

1. Certificate of Good Standing
2. Declaration
3. CV

Exhibit B Amended Allan Ellis

1. Declaration
2. Certificate of Good Standing
3. CV

Exhibit C Donald Harris

1. Certificate of Good Standing
2. Declaration
3. CV

Exhibit D Kenneth Owen

1. Declaration

Exhibit E

1. Conference of Chief Justices Adoption of ABA MJP Recommendations

2. ABA MJP Adoption of Model Rule for Admission on Motion

3. ABA 1995 Adoption of Recommendation 8A Calling for Elimination of State Bar Membership Requirements for Practice Before U.S. District Courts

Exhibit F

RAND Corporation Reports–Showing California Entirely Subjective Bar Exam Given to Experienced Attorneys is Less Reliable Than Flipping a Coin

Exhibit G Declaration of Marvin Comisky

Exhibit H Declaration of David B. Fawcett

Exhibit I – Philadelphia County Bar Association Ethics Opinion 2005-14 (August 2005). This opinion, in sum, raises the question whether a lawyer licensed in Russia, who also received an LLM from an approved ABA accredited law school who passed the bar exam in another state, and who is admitted to practice before the Immigration and Naturalization Court, and who is, however, presently ineligible to sit for the Pennsylvania bar exam or waive into the Pennsylvania bar on admission by motion, can ethically open an office in Pennsylvania for the limited practice before Immigration and Naturalization Court. The opinion holds the lawyer is authorized to open an office in Pennsylvania under the Model Rules of Professional Conduct, Rule 5.5 "Multijuridictional Practice of Law" for practice before Immigration and Naturalization Court.

Exhibit J – Proof of Irreparable Injury Caused by Constitutional Inadequate Access to Court and Counsel. The Daily Journal on January 13, 2005 reports, in sum, that presiding judge William MacLaughlin of Los Angeles Superior Court stated that of the 2.7 million cases heard last year in the Los Angeles Superior Court system, 2 million featured at least one

party acting as his or her own counsel. Presiding Judge MacLaughlin said the chief factor likely is economic, "The cost of legal services has grown and grown, and it seems that fewer and fewer people are able to afford legal services." Judge MacLaughlin reports it was "hugely frustrating" for judges because many pro-per litigants come without the right forms or with forms filled out incorrectly.

Exhibit K – Proof of Irreparable Nationwide Injury Caused by Inadequate Access to Court and Counsel. The Legal Aid Services in a national study titled "Documenting the Justice Gap in America," reports that legal aid cannot meet the needs of 80% of the people that it serves.

Exhibit L – Proof Lawyers Cannot Justify Monopoly Licensing Protection, and this Licensing Protection Results in Inflated Salaries that Injures the Public By Driving Up the Cost of Legal Services. The Daily Journal reports, based on public admissions that starting salaries for first year associates at national law firms are $125,000 to $135,000, and partner profits are in excess of $1,000,000 per year.

Exhibit M –Stanford Law Dean Fails California bar exam for experienced attorneys. Attached Wall Street Journal article dated December 5, 2005 reporting: (i) that Stanford Law Dean Kathleen Sullivan was recently failed on the California bar exam for attorneys; (ii) Dean Sullivan is the author of a well known case book on constitutional law; (iii) the California bar exam pass percentage for experienced attorneys on the test Kathleen Sullivan allegedly failed was 28%; (v) Kathleen Sullivan's partner stated, "If anyone should have passed it is Ms. Sullivan. The problem is not with Kathleen Sullivan, it is with the person who drafted the exam or the person who graded it."

Exhibit N –Bombay, India Native Who Never Attends Law School Passes California Bar Exam.

Exhibit O – SCIENTIFIC TESTS DEMONSTRATE EXPERTS AND NOVICES ARE MORE QUALIFIED TO JUDGE COMPETENCE THAN LICENSING OFFICIALS. Attached is Klein, Sources of Power (The MIT Press 1999) *Chapter 10 The Power to See the Invisible*, *supra*, "Example 10.1 The Instructors Who Couldn't Save Their Own Lives."

Dr. Klein demonstrates controlled tests established:

(i) nine out of ten experts were able to spot another experienced expert;

(ii) five out of ten novices who finished an eight hour course were able to spot an experienced expert; and

(iii) only three out of ten instructors (licensing officials) who taught the novices, but who never actually practiced, were able to spot an experienced expert.

Exhibit O by analogy explains why a Bombay India native who never went to law school can be judged competent on the California bar exam by those who have never practiced (See Exhibit N), and why the Dean of Stanford Law School can be judged incompetent by those who have never practiced. See Exhibit M.

Exhibit O proof of the blind leading the blind correlates (almost 100%) with Exhibit D — the Rand Corporation studies that admit, beyond any doubt, the eight-question entirely subjective test given to experienced attorneys is less than .48% reliable.

Exhibit P – CLIENT REPRESENTATION IN THE 21st CENTURY (Report of the American Bar Association Multijurisdiction Practice Commission)

Exhibit Q– United States Department of Justice Backs Split of Ninth Circuit; United States House of Representatives Scolds Ninth Circuit; Size Mattered In Fiery Partisan Debate About Ninth Circuit.

Exhibit R– Plaintiffs' Summary of Key Points from "A National Action Plan on Lawyer Conduct and Professionalism" (Adopted by the Conference of Chief Justices January 21, 1999).

First, the Conference of Chief Justices in the "**Introduction**" states: "(T)he vast majority of lawyers in this country are competent professionals. They are conscientious advocates of their clients' interests, honest in their representations to courts and to opposing counsel, civil to their legal colleagues, and generous contributors of their time and expertise to their communities. In short, they conduct themselves according to the highest dictates of the legal profession. (Page 1)

Second, the Conference of Chief Justices as to "**Bar Examinations**" states: "The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

Comment

State bar examinations traditionally test bar applicants' knowledge of substantive legal principles, but rarely require more than a superficial demonstration of the applicants' understanding of legal ethics, professionalism, or basic practical skills.** Thus, they fail to provide an effective measure of basic competence of new lawyers. The format of the bar examination should be modified to increase the emphasis on the applicants' knowledge of applied practical skills, including office management skills. Performance testing methods should be used to

evaluate applicants' writing, research, and organizational skills. An essay question format is preferred over a multiple choice format for testing ethics and professional responsibility. Essay questions should incorporate issues related to legal ethics and professionalism, including the consequences of unprofessional, unethical, and incompetent practice habits.

A passing score on the bar examination should be an indicator of basic competency to practice law. Scoring of the bar examination should be consistent within the jurisdiction. To the extent that interstate coordination is practical, the scoring should be consistent with neighboring jurisdictions. (Page 15)

Third, the Conference of Chief Justices as to "**Interstate Cooperation**" states:

"The appellate courts of highest jurisdiction should cooperate to ensure consistency among jurisdictions concerning lawyer regulation and professionalism and to pool resources as appropriate to fulfill their responsibilities. Specific efforts of interstate cooperation include:

- Continued reporting of public sanctions to ABA National Regulatory Data Bank;
- Using the Westlaw Private File of the ABA National Regulatory Databank;
- Inquiring on the state's annual registration statement about licensure and public discipline in other jurisdictions;
- Providing reciprocal recognition of CLE;
- Establishing regional professionalism programs and efforts;
- Recognizing and implementing the International Standard Lawyer Numbering System created by Martindale-Hubbell and the American Bar

Association to improve reciprocal disciplinary enforcement; and

- Providing information about bar admission and admission on motion (including reciprocity) on the bar's website.

Comment

Successful efforts to improve lawyer conduct and professionalism require a national commitment. Legal practice in multiple jurisdictions increasingly is the rule rather than the exception, particularly given improvements in communication and transportation technology. The appellate courts of highest jurisdiction should not only provide leadership and coordination of professionalism and legal ethics programs within their own states, but also should encourage interstate cooperation, including pooled resources. (Page 34)

Exhibit S "A National Action Plan on Lawyer Conduct and Professionalism" (Adopted by the Conference of Chief Justices January 21, 1999). (Full Report).

Exhibit T– "Chart VIII Admission on Motion" Comprehensive Guide to Bar Admission Requirements (National Conference of Bar Examiners and American Bar Association Section on Legal Education and Admission to the Bar 2005).

Chart VIII establishes 34 States (including the District of Columbia) have adopted admission on motion without any further testing. Additionally, since Chart VIII was published the State of Kansas has adopted admission on motion for experienced attorneys.

Exhibit U– National Conference of Bar Examiners Admission on Motion Statistics — 27,255 attorneys admitted to another State's Bar on Motion in between 1999-2004

These public records also reveal that 702 attorneys were admitted to the bar of the Pennsylvania Supreme Court, and thus were categorically eligible for *general* admission on motion to the bar of the Eastern District of Pennsylvania without taking any additional bar examination.

Additionally, these 27,255 "mainstream" attorneys admitted on motion to the States were categorically ineligible for *general* admission privileges to the bar regardless of individual merit under the extremist" "local" rules of the United States District Courts for the Districts of New Jersey and California.

Exhibit V – Foreign Legal Consultant Licensing Rules Have Been Adopted by 26 States, American Bar Association Center for Professional Responsibility Joint Committee on Lawyer Regulation (September 20, 2005). Thus, foreign lawyers in 26 states have been certified as privileged to practice foreign law: While Plaintiff American citizen federal practice specialists are categorically ineligible regardless of individual merit for certification and general admission privileges to the United States District Courts under the challenged "local" (sic) rules.

Exhibit W– Kenneth Owen Supplemental Declaration of Injury

Exhibit X– PLAINTIFFS' NOTICE AND REQUEST FOR A FRCP 26(f) CONFERENCE dated November 30, 2006: To which defense counsel has refused to cooperate with.

Exhibit Y– PLAINTIFFS' Interrogatories (First Set), Requests for Admission, and Notice of Deposition to Alberto R. Gonzales dated December 9, 2006 ignored by defense counsel.

Dated: January 31, 2006

Respectfully submitted,

By: /s/ Joseph Robert Giannini
Joseph Robert Giannini, Esq.
PA SB # 38814
Counsel for Plaintiffs
925 S. Westgate Ave. #102
Los Angeles, CA 90049
Phone 310 442 9386
Fax 310 826 7989
Email: j.giannini@verizon.net

Supreme Court of Pennsylvania
CERTIFICATE OF GOOD STANDING
John F. O'Rourke, Esq.

DATE OF ADMISSION
June 16, 1993

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.

Witness my hand and official seal
Dated: September 2, 2005
Patricia A. Nicola
Chief Clerk

DECLARATION OF JOHN F. O'ROURKE

I, JOHN F. O'ROURKE, am competent to testify and have personal knowledge and being duly sworn, depose and state the following in support of the complaint NAAMJP v. Bush and the relief requested therein:

1. I am a name plaintiff in this action, and bring this action both as a member of the NAAMJP, and as an individual.

2. I am an Attorney-at-Law, admitted to practice before the Supreme Court of Pennsylvania, on June 16, 1993. Attached hereto is a Certificate of Good Standing, obtained from the Prothonotary of the Supreme Court of Pennsylvania and dated; also attached is an abbreviated copy of my Curriculum Vita, summarizing my education, employment, bar admissions, technical associations, award, and selected publications. 3.

3. I was admitted on October 16, 1995, as an Attorney-at-Law at the Bar of the Court of Appeals for the District of Columbia.

4. I also am a member of the Federal Bar, being admitted to practice before the United States District Court of the Western District of Pennsylvania on May 27, 1993; before the United States Court of Appeals for the Third Circuit on November 25, 1994; the United States Court of Appeals for the Federal Circuit on January 31, 1995; and the United States Court of Appeals for the Ninth Circuit in 2005.

5. Further, I am registered to practice before the United States Patent and Trademark Office, admitted on May 8, 1995.

6. I earned a Juris Doctor (JD) from the Temple University School of Law (now Beasley School of Law), Philadelphia, Pennsylvania, in January 1993.

7. Prior to practicing law, I earned a Bachelor's in Electrical Engineering (BEE) and a Masters of Science in Electrical Engineering (MSEE) from the Villanova University College of Engineering, Villanova, Pennsylvania, in May 1984 and May 1989, respectively.

8. Furthermore, I am a Registered Professional Nurse, currently licensed to practice in both Pennsylvania and New Jersey; I earned an Associate in Science, Nursing, at the Atlantic Community College (now Atlantic Cape Community College), Mays Landing, New Jersey, in June 1977.

9. I currently practice as a Registered Patent Attorney in Orange County, California; however, I am not admitted to the California Bar. I am Constitutionally authorized to practice law under the Sperry Doctrine of federal preemption under the Supremacy Clause, which Doctrine, simply put, forbids any State from infringing upon my right to practice in a substantive area of law that is exclusively federal in nature. The Sperry Doctrine was first enunciated in SPERRY v. FLORIDA EX REL. FLORIDA BAR, 373 U.S. 379 (1963).

10. In virtually every jurisdiction, local rulemaking groups facilitate federal Constitutional objectives by

formulating administrative rules of court. These rules are made at the request of a local Article III judge or judicial council. Such rules of court may include specific provisions regulating persons seeking admission to the bar of the respective local federal district court. In general, I neither oppose nor claim harm from local rules aimed to facilitate federal Constitutional objectives, which are applied with a reasonable degree of uniformity among all of the federal districts.

11. My harm, in short, arises from the lack of uniformity and unjustifiable disparities in qualifications for admission to practice in a substantive area of exclusively federal law, as those diverse qualifications are expressed among the local rules of the ninety-four (94) federal district courts of the thirteen (13) Federal judicial Circuits.

12. I have sustained concrete injuries to my professional practice and career, and to my personal life, as a direct result of the patchwork of local rules among districts of the federal courts.

13. These aforementioned injuries impose an actual, ongoing harm that exists presently and in the past. The effect of these injuries is cumulative.

14. In addition to suffering actual, direct, and personal injuries, the local rule patchwork creates a milieu of diminishment, in which I will inevitably suffer continued actual, direct, and personal injuries.

15. By "milieu of diminishment," I mean that the patchwork of local rules in the federal judiciary, such as in the four local Districts of California, creates a

negative and hostile professional working environment, essentially nationwide in scope, in which I am branded with second-class status - as something less than a "real attorney" - and am prevented from representing clients in federal courts, de jure, in California, and, de facto, in other jurisdictions as a result of my diminished status in California, as perceived by other California practitioners.

16. In jurisdictions such as the four federal district courts of California, local rulemaking is undertaken by a rulemaking body at the request of a local Article III judge, or judicial council groups. This group, drawn from local members of the State bar, formulates self-serving rules barring admission to any attorney deemed, in an idiosyncratic manner, to be unworthy of admission to the local federal bar.

17. Under the local rules of the District Courts of California', an attorney may routinely represent clients before these federal courts o if that attorney is admitted to the California Bar, even if that attorney practices in an area of law that is exclusively federal in nature, is preemptive of State laws, and is not amenable to regulation or control by the State Bar, except as otherwise allowed by federal law.

18. Under the local rules of the District Courts of Californiafn2, any attorney who lives or works in California is barred from making pro hoc vice appearances before these federal courts. Again, such restrictions are wrongly applied against practitioners of federal law in California, even if that attorney practices in an area of law that is exclusively federal in nature, is preemptive of State laws, and is not amenable to

regulation or control by the State Bar, except as otherwise allowed by federal law.

19. As a direct and immediate result of the local rules of the four federal district courts in California, I am unable to make an "appearance before the Court on behalf of another party or a class" on any, exclusively federal, patent or copyright matter, in any of these courts, merely because of my place of residence, namely, California.

20. Ironically, although any client seeking my services in California would necessarily be turned away, I could represent the same clients on the same matters, exclusively federal in nature, in the federal district courts of other locations within the Ninth Circuit, including Alaska, Arizona, Hawai'i, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington.fn3 The practical impact is not merely "chilling," it eliminates me from consideration, regardless of my technical and patent knowledge and experience.

21. Likewise, in other federal district courts having idiosyncratic restrictive local rules for admission, a client seeking my representation in that forum would be denied my counsel on an exclusively federal patent or copyright matter, merely because the local bar, by way of the local district court rules, imposes an arbitrary barrier to practice on a federal practitioner. Thus, these local rules deny clients the right to seek the most qualified counsel to represent them in federal district court on a federally-preempted matter of law.

22. Many attorneys, who practice in esoteric areas of federal law, like me, have multi-professional backgrounds enriched though many years of diverse education and professional experience in specialized extralegal areas. Moreover, by undertaking the study of specialized areas of law, such a practitioner brings a depth and breadth of knowledge to the client that is unrivalled by others of more pedestrian training, despite the best efforts of the ordinary practitioner. These attorneys meld their expertise in one or more arcane extralegal disciplines with a body of specialized legal skills, directing the concerted whole to their client's relief. In many cases, such an attorney may be one of the few to speak a client's specialized language and terms of art, to fully appreciate the client's needs, and to translate those needs into the court of a federal district court. To deny clients the services of such experts merely on arbitrary grounds is unfathomable.

23. I bring to the Court first-hand knowledge of such an extra-legal background. My extra-legal background incorporates the electronic, communications, and computer arts, the life sciences and healing arts; and the physical sciences, including nuclear and reactor physics, and mechanical engineering. Although there are numerous others dispersed across the nation, whose qualifications would dwarf mine, I respectfully sub[illegible]t the following summary of my life's work.

24. For nearly twenty (20) years prior to undertaking the study of law, I studied and worked in three disparate scientific disciplines - nuclear operations, nursing, and electrical engineering - from which I cultivated a uniquely broad and deep base of theoretical and empirical knowledge and skills. I actively expand and update this knowledge base, to keep it relevant to

the evolving needs of scientific and technical clients seeking protection for their intellectual property.

25. In 1969, I enlisted in the United States Navy. After basic training, I received 18 months of intensive training in ship's propulsion and auxiliary systems; mechanical, electrical, and chemical sciences; nuclear physics; nuclear reactor theory and operating principles; and actual nuclear reactor and primary systems operations. I applied that knowledge and developed key skills as a Nuclear Reactor Mechanical Operator, on the aircraft carriers, the U.S.S. Enterprise, and the U.S.S. Nimitz. Due to injuries received aboard the U.S.S. Enterprise in the South China Sea off the coast of North Vietnam, I received an Honorable Discharge under Medical Reasons in 1974. As a result, I am
classified by the United States Department of Veteran's Affairs as a disabled Vietnam veteran, having a rated, line-of-duty, service-connected disability.

26. Not realizing the long-term effects of those injuries, I studied nursing at Atlantic Community College (now Atlantic Cape Community College), in Mays Landing, NJ. There I learned the technical aspects of the human animal and its environment - chemistry, anatomy, physiology, microbiology, and many hours of clinical study followed by supervised clinical practice. In 1977, I earned an Associate's Degree in Nursing and, successfully completing the licensure examination, I began practice as a Registered Nurse in New jersey in 1977. Later, in 1979, I was admitted to practice in Pennsylvania, becoming a Research Nurse Specialist at the Children's Hospital of Philadelphia. There I was

involved in many advanced studies involving endocrinology, metabolism, cardiology, oncology, infectious diseases, and the like. As much as I enjoyed being a Nurse, my military injuries (both knees) made this practice setting very difficult. I opted to attempt Electrical Engineering because of the emphasis of cerebral efforts over physical labor.

27. My career transition from the physically-demanding clinical practice of a Registered Nurse to the intellectually-demanding undertakings of an Electrical Engineer was under the aegis of the Veteran's Administration Vocational Rehabilitation Program. As the years pass, the daily impact of this disability on routine physical activities of
daily life become increasingly apparent; and my dependency upon my intellectual assets becomes more absolute.

28. In 1984, I earned a Bachelor's in Electrical Engineering and in 1989, a Master's in Electrical Engineering from Villanova University. In the interim, I worked in the semiconductor industry as an engineer for Intel Corporation; and in telecommunications engineering in the first public switched-packet network for GTETelenet. By 1989, it became clear that the Philadelphia economy offered a brutal future for engineers, so I evolved a plan to focus my prior knowledge and skills in a burgeoning area of law - patents.

29. In 1991 and 1992, I clerked as a Summer Associate at the law firm of Buchanan Ingersoll, P.C., headquartered in Pittsburgh, Pennsylvania, for the sole purpose of becoming a patent attorney. Although I

attended law school in Philadelphia, and lived with my wife and young son in the Philadelphia suburbs, I followed the advice of seasoned patent attorneys in Philadelphia and seized the rare opportunity offered by Buchanan Ingersoll to learn the arcane, but richly developed, legal arts of patent claim drafting, patent preparation, and patent prosecution.

30. In 1993, upon graduation from law school, I began practice as at Buchanan Ingersoll as an Associate Attorney in the Intellectual Property section, where I clerked in 1991 and 1992. While studying for the United States Patent and Trademark Office registration examination, I studied the complex body of law known as patent prosecution. However, my responsibilities also included supervised projects involving patent opinion drafting, patent litigation support, expert opinion analysis, trademark, copyright, trade secret, technology transfer and licensing, federal and state regulatory agency law, and a wide range of other supervised projects having a technical flavor.

31. Since 1993, I have been an Attorney-at-Law, who is an active, avid practitioner of intellectual property law, in both private and corporate practice, and have augmented my technical knowledge base with hard-won legal insights drawn from a dozen-plus years as a Patent Attorney/ advocate representing individual, entrepreneurial, corporate, and academic clients from across the United States and around the world.

32. Collectively, these clients develop, for example, electronics, networking and data communications, robotics, VLSI devices and manufacturing, terrestrial and satellite telecommunications, computer hardware

and software components and systems, medical-surgical systems and devices, and energy and transportation systems.

33. Exemplary patent clients have included a sole inventor with spare resources ~~and a~~ dream; a regional business emerging into a national presence; a US-based Fortune 100 corporation, protecting its geographically-dispersed US workforce by preserving its position in the global technical arena; and a foreign-based international conglomerate expanding operations into, and creating jobs within, multiple US States.

34. A common theme among the clients that I have services is that I am able to speak in their "tongue," whether a neurosurgeon, an Internet pioneer, a long-time telecommunications expert, a Ph.D. nuclear physicist, or a multitalented entrepreneur.

35. I also stood vigil, at drape's edge, in an Operating Room - as Patent Counsel - during a clinical trial of a surgical robot, evaluating which intellectual property was contributed by my client as part of a multi-organization, multi-disciplinary team, unaffected by the frank realities of the surgery, yet attuned to the distinctions made amid the confluence of medical, mechanical engineering, electrical engineering, software and computer engineering discussions that were abuzz among the many disciplines represented in the Operating Theatre. The senior orthopedic surgeon in the effort quipped that I was the only attorney that he would let into an operating room. Point well taken.

36. By about mid-1999, I reaffirmed my desire to continue the evolution of my legal career into that of a

"full-service" Intellectual Property attorney, such as I began at Buchanan Ingersoll in 1991. To reach this goal, I resolved to gain the knowledge and the experience that would be needed to allow my legal practice to competently include a full range of services among the domain of intellectual property law, with a special emphasis on patent procurement, management, licensing, enforcement, and defense. Although my litigation roles to that time were primarily supportive, I looked for opportunities, which would permit me to expand my experience in patent litigation, and to continue building upon my base of patent prosecution experience.

37. In 1999, I accepted an offer for such employment at a Southern California Intellectual Property Law boutique firm, which represented clients in a variety of the region's burgeoning technical industries. There, I continued to practice patent law, on the basis of registration with United States Patent and Trademark Office and admission as an Attorney in Pennsylvania (or the District of Columbia). The practice of law in this manner is protected under the Supremacy Clause of the United States Constitution, as decided in Sperry V. Florida Ex Rel. Florida Bar, 373 US 379 (1963).

38. Although I had been a member of the federal bar since May 1993, including the United States Courts of Appeals for the Third Circuit and for the Federal Circuit since 1994, I soon discovered that I would not be permitted to have meaningful involvement in federal patent litigation matters because the Local Rules for the four federal District Courts of California required that I first be admitted to the California Bar, irrespective of my membership in other state and

federal bars. Over the next several years, the projects to which I was assigned were nearly exclusively patent preparation and prosecution, denying me the patent litigation experience that I sought to receive. I could not be brought onto patent and other federal litigation projects without exception, I was told, because I was not admitted to the California Bar.

39. It is my observation that I am not considered for any federal litigation tasks, even in patents, regardless of where the case may lie. The longer 1 am unable to practice in California federal courts, the less likely that I will gain that experience elsewhere. Thus, I have first-hand knowledge of actual harm inflicted upon patent attorneys working in California, who are not admitted to the California Bar.

40. It also is my observation that the Local Rules of the affected federal district courts, such as those in California, create a de facto "Local Rules apartheid," which imposes irrational limitations on federal bar practice upon otherwise qualified members in good standing of the federal bar, including myself. The practical effect of the restrictive local rules, as is the case with the federal district courts in California, is to create a de facto, two-class federal bar.

41. The actual harm caused by the "Local Rules apartheid" is most plainly shown in daily practice. Subject to the Local Rules, Registered Patent Attorneys who are not admitted to the California Bar, such as I, may not routinely enter appearances to represent their clients on federal patent matters in the district courts of California. Similarly, these patent attorneys cannot make routine appearances in support

of other Counsel, to apply their special technical and legal expertise on federal matters.

Moreover, admission to the California Bar itself may be irrelevant to gaining admission to an out-of-state federal district court, where the idiosyncratic Local Rules of that outof-state federal district court likewise require state court admission, as does the Local Rules of the federal district courts of California.

42. Based on my personal observations and experiences during the period from September 1999 to the present, oppressive local rules, such as the local rules of the four California District Courts, limit professional development opportunities, substantially reduce opportunities for employment or client development, and create a class of second-tier federal practice attorneys whose dismissal may be easily justified during an economic downturn by their perceived lack of versatility. This is one stark, long-term example of the aforementioned "milieū of diminishment."

43. As the recent technical recession of 2000-2004 reached its nadir, I experienced first-hand the impact of the "Local Rules apartheid". In 2002, at the age of fifty-two and physically disabled, I was out of work and in a jurisdiction whose Local Rules prevented me from finding meaningful employment by applying my technical and patent prosecution expertise in a litigation setting, even if prosecution case work was sparse. The financial effects were catastrophic.

44. Thus, not only do these defective Local Rules create a subclass of "less versatile" federal attorneys, who are less desirable as employees or as future partners, these

defective Local Rules twice-penalize the de facto attorney subclass by creating significant barriers to their re-employment - regardless of previous legal or technical experience. These barriers themselves do create circumstances which become barriers to being admitted to the California Bar, leaving no way out.

45. During the period of 2002-2004, I aggressively sought re-employment by turning to executive recruiters, by responding to advertisements in print and electronic legal publications, and by making plain cold calls. I received only two responses out of over three hundred - both negative.

46. In a dramatic turn-about from 1999-2000, in 2002-2003, prospective California employers, both law firms and in corporations, demanded almost universally that, to be considered as a candidate for employment, a registered patent attorney be admitted to the California Bar.

47. Moreover, California Bar admission trumped other qualifications, including graduate degrees in a technical area of interest, or prior corporate patent practice experience. In rare, frank conversations with executive/legal recruiters regarding my state of affairs, my lack of admission to the California Bar - and being considered as "unavailable" for patent litigation projects - was the most significant barrier.

48. Because admission to the highest local state court is not a universal requirement for admission to the bar of a federal district court, it became all too apparent that these oppressive Local Rules impose an arbitrary barrier to practice for affected federal attorneys.

Moreover, these Local Rules force clients needing counsel having specialized legal and technical expertise, to select from a smaller pool of potentially less-qualified professionals

49. I am currently employed again as a Registered Patent Attorney. However, the impairments, imposed by the oppressive federal district court Local Rules in all three Districts of California, remain. I cannot make appearances on behalf of clients, in exclusively federal matters, including in patent or copyright matters, before any of the federal District Courts of the Northern District, Eastern District, Central District, or Southern District of California. The infirmities of the California federal district court Local Rules notwithstanding, there are a number of other federal district courts in which I cannot make appearances on behalf of clients, in exclusively federal matters, including in patent or copyright matters, because the Local Rules for admission to the respective bars of those federal district courts are similar to the arbitrary restrictions imposed in California.

50. The absurdity of these challenged local rules is further evident because in some areas of federal practice I could be qualified as an expert witness under the Federal Rules of Civil Procedure, however, I am categorically barred from representing clients as counsel in litigation. Thus, I am qualified to be an expert witness on various intellectual property and scientific litigation cases but denied the right to act as counsel, while attorneys that are not admitted to the patent bar are eligible to serve as counsel in these intellectual property and scientific litigation cases.

51. It is a well know enormous advantage for a licensed doctor who is also a lawyer to serve as counsel in medical malpractice cases, both in settlement discussion and in litigation, whereas that parallel privilege is modified and abridged, and others with similar credentials and experience, by the challenged local federal district court bar admission rules.

52. Until the local rule patchwork is abolished, I inevitably will suffer additional and very real injuries. Until those rules are eliminated, and federal bar practice is made uniform nationwide, I will face the same vulnerability and continue be tagged as "less versatile" solely due to these arbitrarily restrictive Local Rules. Unless the local rule patchwork is abolished by a favorable decision, I expect actual future injuries to my person and to my career to have a devastating effect both in the present and in the future.

Sworn to under penalty of perjury under the laws of the United States.

Dated: 10-24-2005

DECLARATION OF ALAN ELLIS

1. ALAN ELLIS, am competent to testify, and have personal knowledge, and if called as a witness would declare under oath the following in support of the complaint NAAMJP v. Bush and the relief requested therein:

2. I am a name plaintiff in this action, and bring this action both as a member of the NAAMJP and as an individual. I am herein incorporating by reference a true and correct copy of my Curriculum Vitae attached herewith.

3. I am a principal in the Law Offices of Alan Ellis. The Law Offices of Alan Ellis has a national practice and regional offices in San Francisco (San Rafael), California and Philadelphia (Ardmore), Pennsylvania. Our web site address is www.alanellis.com.

4. The Law Offices of Alan Ellis is a full-service sentencing, and postconviction law firm representing federal criminal defendants and inmates throughout the United States and abroad. Our practice area of federal criminal defense, of course, comes within the ambit of the 6th Amendment right to counsel, and includes:

- Appearing as criminal defense counsel in the federal district courts.
- Habeas corpus 2255 and 2241 petitions.
- Plea negotiations.
- Sentencing representation and consultation.
- Direct appeals in all circuits from conviction and sentence.
- Rule 35 motions.

- Supreme Court practice.
- Prison designation, transfers, disciplinary matters, and other problems.
- Parole representation.
- International prisoner transfer treaty work for foreign inmates and Americans arrested abroad.

4. Approximately one-third of our work comes to us from defense attorneys requesting our assistance on cases. Another third of our cases come to us from defendants, their family and friends wanting us to work with their attorneys. The remaining third come to us from defendants, inmates or their family and friends with requests for representation.

5. Most of the attorneys associated with the Law Offices of Alan Ellis have clerked for federal judges, and several have been law school professors. I was privileged to serve as law clerk for the Honorable Raymond J. Broderick, of the Eastern District of Pennsylvania, and the Honorable John W. Lord, Jr., Chief Judge, United States District Court for the Eastern District of Pennsylvania.

6. I graduated from Villanova University School of Law in 1967, and was the editor of the Villanova Law Review; and received the Constitutional Law Award.

7. I am a Former President of the National Association of Criminal Defense Lawyers (NACDL); a Former member of the Board of Directors of the National Council on Crime and Delinquency; Fellow of the American Board of Criminal Lawyers; and Past President of the ACLU of Central Pennsylvania.

8. I write a regular quarterly column on Federal Sentencing for the American Bar Association's Criminal Justice Magazine, I am the Publisher of "Federal Presentence and Post Conviction News" and the co-author of the Federal Prison Guidebook, the Federal Sentencing Guidebook and the Federal Post Conviction Guidebook.

9. While I am admitted to practice law before numerous federal district courts, courts of appeals, and the United States Supreme Court, the only state in which I am admitted to practice is Pennsylvania.

10. Because of my federal criminal practice and 3 5 years of experience in this specialty, I am regularly called upon to serve as counsel in the federal district courts and United States Courts of Appeals throughout the United States. The United States Court of Appeals for the Ninth Circuit has been kind enough to describe me as a "nationally recognized expert in federal criminal sentencing." United States v. Waiters, 309 F.3 rd 589 (ith Cir. 2002). In the Courts of Appeals, I apply for general admission once and for all, and this is the end of it. The same is not true for the district courts where I am often met by local rules that favor local attorneys.

11. I am injured in fact by the local rules of the United States District Courts that deny reciprocal general admission on motion to out-of-state attorneys. It would be either impossible or extraordinarily burdensome to conduct a national federal criminal defense practice, if the federal law specialist was required to be admitted in every single state in which there is a federal district court. The prohibitive cost in gaining admission in

every state would also far outweigh the benefit because State law has virtually nothing to do with my federal criminal practice specialty. The condition precedent of being first admitted in the forum state, in order to obtain general bar admission privileges in the United States District Court with that forum state, automatically makes it more costly to practice my federal national specialty both for me and my clients. This increased cost limits my ability as a federal practice expert to serve the public. This increased cost further interferes with the public's increased demand for specialized legal services. This increased cost further handicaps the justice process, as well as Courts themselves, because expert federal practice specialists because of their experience can make the Court's job easier.

12. This increased cost for general admission privileges further does not provide any corresponding benefit because my area of federal criminal practice is either superficially or not tested on any state's bar exam. This increase cost to obtain specialized federal legal services also does not protect the public from incompetent or unethical practitioners because the attorney is subject to the jurisdiction of the federal court for conduct occurring in the proceeding, and to reciprocal State and federal discipline and damages regardless of where the attorney practices.

13. The alternative of pro hac vice admission is a poor substitute for general admission. It is often merely discretionary

14. Pro hac vice admission drives up the costs of litigation, local counsel/ pro hac vice fee. There is also

no real benefit to either the public or the Court by granting pro hac vice admission, but not general admission, because the pro hac vice applicant must aver that he is familiar with the local rules and in good standing, as does the applicant for general bar admission. The pro hac vice applicant is also subject to reciprocal discipline.

15. I am particularly injured in fact by the local rules of the Central, Southern, and Eastern Districts of California because the Law Offices of Alan Ellis has a regional office in California. One out of 8 Americans lives in California. I am not admitted to the State Bar of California, and the State of California does not have an admission on motion provision. I am categorically ineligible far general admission privileges under the local rules of the federal district court because I am not a member of the California State.

16. In U.S. v. Waiters, 309 F.3d 589 (9th Cir. 2002), on behalf of the defendant, I applied for and was denied pro hac vice status under the local rules of the Southern District of California because I have an office in California. The local rules of the Central and Eastern Districts of California mirror the Southern District of California. Because I am not a member of the State Bar of California I am not eligible for general admission. Additionally, because I have an office in California I am categorically and mechanically disqualified from pro hac vice admission in these district courts. The Ninth Circuit held my client's constitutional right to counsel was abridged by this pro hac vice local rule, but this was harmless error. I was thus denied pro hac vice admission under the local rules which have not been changed or amended.

17. If these challenged local rules are invalidated, I will petition for general admission in the California federal district courts where I regularly appear. Once admitted in these federal district courts, I will be able to represent my potential clients and clients without delay and unjustifiable expense. This will save my clients, potential clients, and myself valuable time and money, and avoid the duplication of unnecessary work. This will also save valuable Court time and money because, whether r am appearing pro hac vice or generally, I will still be subject to the same Rules of Professional Rules of Conduct and reciprocal discipline.

Sworn to under penalty of perjury under the laws of the United States.
Dated: 1-6-06
Alan Ellis

Supreme Court of Pennsylvania
CERTIFICATE OF GOOD STANDING
Alan Ellis, Esq.

DATE OF ADMISSION January 8, 1968 The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.

Witness my hand and official seal

Dated: August 24, 2005

John W. Person Jr.
Deputy Prothonotary

ALAN ELLIS

The firm's founder, Alan Ellis, is a nationally recognized authority in the fields of plea negotiations, sentencing, appeals, parole and prison matters, habeas corpus 2241 and 2255 petitions and international prisoner transfer treaties. For the past 35 years, he has successfully represented federal criminal defendants and prisoners throughout the United States and abroad. He is a sought-after lecturer in criminal law education programs for attorneys and is widely published in the areas of federal sentencing and post conviction remedies, with more than 85 articles to his credit.

Mr. Ellis is

- Former President of the National Association of Criminal Defense Lawyers (NACDL

- Former member of the Board of Directors of the National Council on Crime and Delinquency
- Fellow of the American Board of Criminal Lawyers
- Past President to the ACLU of Central Pennsylvania
- AV rated by Martindale-Hubbell - an AV Rating is Martindale-Hubbell's highest ratings for attorneys. It shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.

At the forefront of critical issues facing the criminal defense bar, Mr. Ellis founded the NACDL Lawyers Assistance Strike Force which has attained national prominence for its support of criminal defense lawyers who are prosecuted, subpoenaed and harassed as a result of their ethical and vigorous defense of their clients. He also founded NACDL's Amicus Curiae Committee which, during his tenure, filed briefs in over 40 major state and federal cases throughout the United States. For his work in founding NACDL's Strike Force and Amicus Committee, he was awarded the Association's 1983 Robert C. Heeney Award for distinguished contributions to the criminal defense bar.

Mr. Ellis has been interviewed extensively by the national media, including the New York Times, Washington Post, Thne Magazine, USA Today, "NBC Nightly News", "ABC World News Tonight", "CNN Prime News", "CBS Radio News", and "National Public Radio".

He has been featured in the American Bar Association Journal, the San Francisco Recorder, the Philadelphia Inquirer, the Pacific Sun and profiled by the syndicated TV magazine show, "In America/The West" as well as KGO TV, the ABC affiliate in San Francisco. Mr. Ellis has written numerous editorials on criminal justice issues which have appeared in the Wall Street Journal, San Francisco Chronicle, Atlanta Constitution, San Diego Union, Oakland Tribune, Sacramento Bee, St. Louis Post Dispalch, Chicago Tribune, Salt Lake City Tribune, Pittsburgh Press, and LaOpinion. Mr. Ellis authors a regular quarterly column on Federal Sentencing for the American Bar Association's Criminal Justice Magazine and is the Publisher of "Federal Presentence and Post Conviction News" and the co-author of the Federal Prison Guidebook, the Federal Sentencing Guidebook and Federal Post Conviction Guidebook.

He has served as a member of the editorial board of the Criminal Practice Manual published by the Bureau of National Affairs Inc. and Drug Law Report published by Clark Boardman, Ltd.

A former law professor and federal law clerk to two federal judges, Mr. Ellis is a 1967 graduate of Villanova University School of Law and an editor of the Villanova Law Review.

Mr. Ellis, age 61, is married to Lianne C. Scherr, a mitigation specialist member with the firm, has two children and two grandchildren and a golden retriever.

District of Columbia Court of Appeals
Committee on Admissions
500 Indiana Avenue, N.W. –
Room 4200 Washington, D. C. 20001
202 / 879-2710

I, GARLAND PINKSTON, JR. , Clerk of the District of Columbia Court of Appeals, do hereby certify that DONALD RAY HARRIS was on the 1st day of MARCH, 2009 duly qualified and admitted as an attorney and counselor and entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the city of Washington, D. C . , on September 27, 2005.

September 27, 2005.

GARLAND PINKSTON, JR. , CLERK
Deputy` Clerk

Declaration

I, Donald R. Harris. and attorney licensed by the Bar of the District of Columbia. I practice law in the Northern District of Ohio Federal Courts. I have been admitted to practice before the United States District Court in Northern Ohio and The United States Bankruptcy Court for the Northern District of 'Ohio, I do affirm and state the following:

1. I have passed all the requirements to practice before the bankruptcy bar in the Northern District of Ohio.

2. I have been admitted pro hac vice before the United States Bankruptcy Court for the Middle District of Florida in Orlando, Florida.

3. I have been admitted pro hac vice before the United States Bankruptcy Court for the Southern District

4. I have been harmed by the inability to practice in other jurisdictions of the Federal Bankruptcy Courts even though I have met the requirements of the Federal Bar in the above mentioned districts.

Further sayeth naught
Donald Ray Harris
Dated: 10/24/05

Before me a notary, appeared Donald Harris on this 24th day of October 2005.

DECLARATION OF KENNETH OWEN

I, KENNETH OWEN, am competent to testify, and have personal knowledge, and if called as a witness would declare under oath the following in support of the complaint NAAMJP v. Bush and the relief requested therein:

1. I am an officer of the NAAMJP. I am a member of the State Bar of Arizona, the District Court of Arizona, the Ninth Circuit, numerous other United States Courts of Appeals, and the United States Supreme Court. I practice in immigration law with a focus on federal appeals.

2. I am as an officer of the NAAMJP authorized to make this Declaration in support of our complaint and motion for preliminary injunction and injunction. As the 13 colonies joined together for their common purposes, the NAAMJP is a non-profit public benefit corporation, organized under California law with offices in Los Angeles, CA, that has joined together for a common purpose. We are a national association and have members working and living throughout the United States.

3. Our members, like myself, are often called upon to travel to and serve as counsel for our clients and prospective clients in states other than in the State where we are initially admitted. Our members are often called upon to travel across state lines to vindicate federal rights including their own rights.

4. The NAAMJP public purpose is stated in our name, and it is also to assist and facilitate our members First

Amendment rights and the adopting of the recommendations of the ABA MJP Commission.

5. Our associational mission is also not unlike the NAACP. The National Association for the Advancement of Colored People was organized and operated because black people were not being treated equally under our Constitution because of popular prejudice against them. As elegantly stated by Martin Luther King, Jr., "The right to petition includes the right to petition for rights." Attorneys in this 21St Century, often times are treated much like black people when they cross state lines because of popular prejudice against them. They are denied equal privileges and immunities. They are denied the right to petition for rights. The Bill of Rights sacred promise has been betrayed by the United States government by secret vote without any record being made of the proceedings.

6. Attorneys in this 21 St Century - much like our Founding Fathers who stated the famous taboo "No taxation without representation" - are being taxed by the United States government and denied their rights to choose their representatives in the United States District Courts by the challenged local rules. These local rules betray the core promises upon which our more perfect Union was formed.

7. The NAAMJP as an organization is injured by the challenged local United States District Court rules because we cannot associate and select our counsel of choice in order to petition for the redress of grievances. Our members individually are also injured by the challenged local rules because the NAAMJP is

handicapped in expressing their associational and petition rights. When more than one person joins together to express their communication in a petition, each has an indivisible and united interest in the redress of those grievances.

8. For example, the NAAMJP, as well as myself individually, are injured-in-fact by the local rules of the District Courts in New Jersey and California. These local rules only permit local attorneys to gain admission in the federal district courts in New Jersey and California. The NAAMJP is injured-in-fact because I am categorically, and so are many of our other members, categorically barred from serving as counsel for our filing the subject complaint by the local rules of the District of New Jersey and the Central District of California.

9. I am neither a member of the State Bar of New Jersey nor California. Thus I am categorically barred from general admission in all of the federal district courts sitting in California. I also live in California. As such, I am categorically disqualified from pro hac vice admission in the Southern, Central, and Eastern District Courts of California because I live and work in California. In other words, I can represent my clients before United States Immigration Courts, the District of Arizona, the Ninth Circuit, and the U.S. Supreme Court, but not the federal district courts sitting in California.

10. As one attorney that we have requested to assist us has succinctly stated the issue, "you want to retain me to bust up our monopoly?" This federal "local" rule

discrimination provides a reinforcing steel sword and Chinese wall for state unlawful conduct.

11. We are, and I am, further injured because we cannot freely vindicate federal rights and champion locally unpopular causes that arise from unlawful State laws - that could be challenged in federal district court - because of State law that has nothing to do with federal law and federal bar membership.

12. What is at issue in this Complaint is not a controversial subject such as the right to abortion, or the right to gay marriage, what is at issue here arises from Congressional enumerated powers and is squarely protected by the Bill of Rights: speech, association, assembly, petition in a public forum, and travel.

13. The NAAMJP, as well as myself, are further injured by the local rules of the Eastern District of Pennsylvania. Arizona does not have reciprocity with Pennsylvania. I am thus categorically denied general bar admission in the Eastern District of Pennsylvania because of the State of Pennsylvania's rules adoption by reference. The NAAMJP is injured because every time a local District Court rule drives up the cost of petitioning for redress of grievances or discriminates against out-of-state attorneys or citizens our government of checks and balances - is overwhelmingly weighted in favor of local state interests and federal interests are categorically disrobed.

Sworn to under penalty of perjury under the laws of the United States.

Dated: October 10, 2005

Kenneth Owen

CONFERENCE OF CHIEF JUSTICES

Resolution 36

Regarding the ABA Commission on Multi-Jurisdictional Practice

WHEREAS, the states' highest courts regard consumer protection and an effective system of professional regulation as one of their prime responsibilities; and

WHEREAS, the Commission on Mufti-Jurisdictional Practice (the MJP Commission) has outlined a series of steps to improve the American Ear Association's model rules on the practice of law and the regulation of the profession; and

WHEREAS, the Commission's report emphasizes and reaffirms the central role of state courts in implementing improvements in law practice and professional responsibility,

NOW THEREFORE BE IT RESOLVED that

1. The Conference of Chief Justices commends the proposals of the MJP Commission as a good platform on which states can build more effective, more predictable regulation; and

2. The Conference of Chief Justices asks its representative in the ABA's House of Delegates vote to adopt the recommendations of the MJP Commission.

Report 201G

AMERICAN BAR ASSOCIATION COMMISSION ON MULTIJURISDICTIONAL PRACTICE REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed Model Rule on Admission by Motion, dated August 2002:

Model Rule on Admission by Motion

l. An applicant who meets the requirements of (a) through (h) of this Rule may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

(a) have been admitted to practice law in another state, territory, or the District of Columbia;
(b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the graduate matriculated;
(c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;
(d)establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(e)establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
(f) establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and
(g) designate the Clerk of the jurisdiction's highest court for service of process.

2. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of bar admission in the jurisdiction to which application is being made be accepted toward the durational requirement:

(a) Representation of one or more clients in the practice of law;
(b) Service as a lawyer with a local, state, territorial or federal agency, including military service;
(c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
(d) Service as a judge in a federal, state, territorial or local court of record; (e) Service as a judicial law clerk; or
(f) Service as corporate counsel.

3. For the purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the

jurisdiction in which the clients receiving the unauthorized services were located.

4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

REPORT

At one time, lawyers tended to maintain their law offices in a single jurisdiction over the course of their entire legal careers because of the local nature of law practice. Today, in contrast, geographic mobility is unexceptional. Lawyers move from one state to another in order to continue to serve clients who are relocating or to better serve clients that function outside the state, for personal reasons, for career advancement, or for a host of other reasons. Lawyers change law firms or employers, or simply reestablish their individual practices in different jurisdictions. Lawyers in large law firms move from one office of their firm to another. Lawyers employed by corporations move from one corporate office to another.

Jurisdictional restrictions impede national mobility, because in many cases the process for admitting lawyers to practice law in a new jurisdiction is lengthy, expensive, and burdensome. Some states subject a lawyer who is already licensed and experienced in legal practice to the process designed for admitting new law school graduates. The practicing lawyer is required to take the state bar examination and, upon receiving a passing grade, to undergo character and fitness review.

Although the primary concern in the submissions to the Commission has been the application of UPL restrictions to United States lawyers' occasional practice in jurisdictions in which they do not maintain an office, the Commission has also received submissions focusing on the difficulty of establishing a law practice in a new jurisdiction.

A number of states facilitate the admission of experienced lawyers who are moving their law practice by allowing them to gain admission to the bar without sitting for the bar examination, if they demonstrate that they have been in active law practice in another jurisdiction for a specified period of time and are members in good standing of the other jurisdiction's bar. fn2 The admission on motion processes in these states recognize the reality that lawyers who have been admitted to another state's bar and have practiced actively for a significant period of time without disciplinary sanction are qualified to establish a law practice in the new state, and that, for experienced lawyers, the bar examination therefore serves as an unnecessary obstacle to establishing a practice in the new state. This is particularly true because, with the advent of multi-state bar examinations, most bar-examinations have become increasingly less distinctive and less focused on the idiosyncrasies of individual states' law. There is nothing to suggest that in states with admission on motion, particular regulatory problems are disproportionately presented by lawyers who gain admission by this process.

Further, as urged by the ABA Section of Legal Education and Admissions to the Bar, it is worthwhile to attempt to distill and standardize the criteria used by states that employ streamlined admissions processes. Fn3 Accordingly, the Commission recommends that the ABA adopt the Model Rule on Admission by Motion developed by the ABA Section of Legal Education and Admissions to the Bar. It should be understood that admission on motion is not an alternative to the multijurisdictional practice standards in proposed Rule 5.5 of the Model Rules of Professional

Conduct, since no lawyer can realistically be admitted to every state bar, even on motion. The motion rules are directed at those lawyers who expect to relocate their practices or to practice regularly in two or more jurisdictions.

Footnotes

Fn1See, e.g., J. Eric Schaal, Associate General Counsel, USG Corporation, letter dated January 8, 2002 to the ABA Commission on Multijurisdictional Practice, www.abanet.org/cpr/mjplcomm2 us .html.

Fn 2 See, e.g., Alaska Bar Rule 2, Section 2 (applicant must have passed bar in at least one jurisdiction and have engaged in active practice of law five of seven years preceding date of application in state that offers reciprocal admission to Alaska lawyers, provided conditions are not more demanding than those in Alaska, and pay a non-refundable fee); Colorado Admission Rule 201.3(1) (admits applicants actively and substantially engaged in the practice of law for five of seven years preceding application in state providing reciprocal admission without exam to members of the Colorado Bar); Connecticut Rules of the Superior Court Regulation Admission to the Bar, Sec. 2-13 (applicant must have practiced law in a reciprocal jurisdiction for at least five of seven years preceding date of application, be in good standing, have good moral character and have passed an examination in professional responsibility or completed a course in professional responsibility, intend to practice law on a continuing basis and devote a major portion of work time to practicing law in Connecticut, and file a fee and affidavits regarding character, education and

disciplinary record); Illinois Admission Rule 705 (applicant must meet educational, character and fitness requirements for Illinois attorneys, pass the Multistate Professional Responsibility Examination, practice continuously five of seven years in jurisdiction offering reciprocity, and pay fee for admission on foreign license); Missouri Supreme Court Rules Governing the Missouri Bar, Rule 8.10 (applicant must have graduated from an ABA approved law school and be licensed and actively practicing five of preceding ten years in at least one jurisdiction offering mutuality of admission without examination; applicant must also meet continuing education requirements, pay a non-refundable fee, file a form for a character and fitness report and file various affidavits regarding work experience and good moral character); New York, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, Section 520.10 (applicant must have been admitted to practice in highest law court in a state or territory of the United States or in another country whose jurisprudence is based upon the principles of the English Common Law and be admitted to the bar of a jurisdiction that would similarly admit New York lawyers without examination; in addition, the applicant must be over 26 years of age, possess a first degree from. approved law school, have practiced five of preceding seven years, pay a fee and submit to other tests of character and fitness at discretion of Appellate Division); North Carolina Supreme Court Rules Governing Admission to the Practice of Law Section .0502 (applicant must be in good standing in every state in which applicant is licensed, have active practice four of preceding six years in a state providing comity admission for North Carolina lawyers, supply complete background

information, pay nonrefundable fee of $1500, establish good moral character, pass the Multistate Professional Responsibility Examination, and supply various types of documentation including certificates of moral character, a recent photograph and fingerprints; applications are not considered until at least six months after the date of filing); Oklahoma Rules Governing Admission to the Practice of Law, Rule 2 (applicant must have graduated from an ABAapproved law school, show good moral character, have practiced five of seven preceding years and be in good standing in a reciprocal jurisdiction, and provide at applicant's expense a report by the National Conference of Bar Examiners; if rules of reciprocal admission and fees in applicant's former jurisdiction are more stringent for admitting Oklahoma lawyers, applicant shall be governed by the more stringent standards); Pennsylvania Bar Admission Rule 204 (applicants must have graduated from an ABA-approved law school, practiced for five of preceding seven years in a reciprocal jurisdiction, passed the Multistate Professional Responsibility Examination and meet various other conditions); Virginia Supreme Court Rule 1A:l (application must be filed under oath with a certificate saying lawyer has been licensed for at least five years; applicant must also complete character and fitness questionnaire, furnish report of the National Conference of Bar Examiners upon request, and pay $500 filing fee; thereafter, the Board will determine whether applicant has established an intention to practice full time as a member of the Virginia Bar and whether applicant "has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination"); Washington Admission to Practice Rule 18 (admission of lawyers

from jurisdictions with substantially similar conditions for admitting Washington lawyers, upon proof of admission to practice, current good standing, active legal practice, moral character and fitness, and payment of a filing fee; if the jurisdiction that licensed the applicant requires Washington lawyers to meet other conditions, the applicant must meet a substantially similar requirement); West Virginia Supreme Court of Appeals Rules for Admission, Rule 4.0-4.5 (applicant must demonstrate intention to practice in West Virginia on at least a minimal basis, have practiced five of last seven years, hold valid license from state in which admissions standards are substantially equivalent to standards in West Virginia, show proof of good moral character and submit affidavits of good character from at least two lawyers, pass the MPRE, provide records of criminal, disciplinary and civil proceedings, and pay application fee); Wisconsin Supreme Court Rule 40.05 (reciprocity for applicants admitted in jurisdictions that grant similar admission to Wisconsin lawyers and recognize Wisconsin's diploma privilege and applicant must have practiced for three of preceding five years); Wyoming Statute 33-5-110 (admits foreign attorneys who have been awarded a J.D. or LL.B. from an ABA-approved law school, engaged in practice five of prior seven years in a reciprocal jurisdiction, upon presentation of certificate of admission to that state and upon a showing of qualification, character and fitness to practice law). cf. Maryland Code Sec. 10-210 and Rule 13, Maryland Rules Governing Admission to Bar.

Fn3 See Counsel of the Section of Legal Education and Admissions to the Bar, Memorandum to the ABA Commission on Multijurisdictional Practice (Feb. 14,

2001), http;//www.abanet.org,/cpr/mip/comm2 - leab.html.

No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House In its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

LAW PRACTICE MANAGEMENT SECTION
STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL
SPECIAL COMMITTEE ON PROFESSIONAL MEDICAL LIABILITY THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, CUYAHOGA COUNTY BAR ASSOCIATION FEDERAL COMMUNICATIONS BAR ASSOCIATION AKRON BAR ASSOCIATION
DAUPHIN COUNTY BAR ASSOCIATION
CLEVELAND BAR ASSOCIATION FEDERAL ENERGY BAR ASSOCIATION THE BAR ASSOCIATION OF METROPOLITAN ST. LOUIS
SAN DIEGO COUNTY BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association supports efforts to lower barriers to practice before U.S. District Courts based on state bar membership by eliminating state bar membership requirements in cases in U.S. District Courts, through amendment of the Federal Rules of Civil and Criminal Procedure to prohibit such local rules.

REPORT

THE PROBLEM

Some United States District Courts restrict practice privileges to lawyers who are admitted to the state bar in which the district is located.

For example, in the Washington, DC metropolitan area, a lawyer admitted to practice in the United States District Court for the District of Columbia may be admitted to the bar of the United States District Court for the District of Maryland regardless of Maryland State bar membership. See D. Md. Local Rules 101, 701 attached hereto.*

However, in the United States District Court for the Eastern District of Virginia, located in Alexandria, Virginia, District of Columbia bar members may not become members of the Eastern District of Virginia bar without being members of the Virginia bar, which requires a bar exam for non-Virginia residents. See E.D. Va. Local Rule 7, copy attached hereto. Similar problems exist in many other contiguous Federal District Courts. See attached random survey.

IMPACT

This is not a local or regional problem. See attached random survey. * The Law Practice Management Section has discussed and reviewed this problem through its Goal 6 Task Force and debated it at its Spring 1993 Section meeting. While not all districts are as restrictive as the Eastern District of Virginia, many others require local counsel to at least be on all

pleadings and restrict the number of times an out of district attorney may appear pro hac vice. We submit these are unnecessary and drive up the cost of litigation to clients.

This exclusionary policy inhibits competition, restricts lawyers from representing clients without incurring the substantial cost of local counsel and drives up costs to clients. Therefore, appropriate action should be taken to eliminate such exclusionary and anticompetitive practices.

*Copies of attachments are available from the Law Practice Management Section upon request. Please call Alice Tully at 312-988-5661.

POSSIBLE OBJECTIONS AND REBUTTAL

OBJECTION 1. Knowledge of local law is required in each state

Rebuttal: Local law can be learned by any lawyer or local counsel will be retained or consulted as necessary.

OBJECTION 2. Out of state lawyers will not know the local rules.

Rebuttal: Each lawyer must certify that he or she has read and is familliar with the local rules prior to being admitted to the bar of the local District Court. See D. Md. Local Rule 701.

OBJECTION 3. Out of state lawyers will be disciplinary problems or hard to reach.

Rebuttal: Out of state lawyers will be subject to the same discipline as in state lawyers and will be reachable in the same way.

OBJECTION 4. Local counsel are needed in cases.

Rebuttal: This should be the decision of the lawyer and client, not mandated by local rule.

CONCLUSION

Given the global nature of law practice today, parochial local rules are inefficient, unduly costly to clients and/or lawyers and anti-competitive. Therefore, this proposal should be adopted.

Respectfully submitted,
Donna M. Killoughey Chair
Section of Law Practice Management
Dated: November 21, 1994

Civil Action No.
05-cv- 5081 TON

UNITED STATES DISTRICT COURT FOR FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAAMJP (National Association for the Advancement of Multijurisdiction Practice), John F. O'Rourke, Alan Ellis, Donald Harris.
Plaintiffs,

v.

George W. Bush, Alberto R. Gonzales, Hen. John W. Bissell, Chief Judge for the United States District Court for the District of New Jersey, Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katharine S. Hayden, Faith S. Hochberg, Jose L. Linares, William J. Martini, Joel A. Pisano, Alfred M. Wolfin, Hon. Consuelo B. Marshall, Chief Judge United States District Court for the Central District of California, Percy Anderson, Terry J. Hatter, Jr., Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter.

February, 1995

STATEMENT OF MARVIN COMISKY

I, MARVIN COMISKY, am competent to testify, and have personal knowledge of the subject matter of this litigation, and if called as a witness would testify the following:

l. I was admitted to the Pennsylvania Bar in 1942 and except for military service from late 1942 to the spring of 1946,1 have been a practicing lawyer.

2. I am a litigator with an appellate-practice specialty. I was admitted to all Courts in Pennsylvania, various Federal District Courts, Federal Courts of Appeal and the U.S. Supreme Court. Attached as an Exhibit is a copy of my resume.

3. My practice was in part practicing in states other than Pennsylvania.

4. When I commenced practicing in Pennsylvania, each judicial district had its own individual admission requirement. This practice was still in place when I became Chancellor of the Philadelphia Bar Association in 1965.

5. Lawyers admitted to practice in Philadelphia, thus, could not appear as practicing lawyers in any other judicial district in Pennsylvania. They were required to have their admission moved Pro Haec Vice or as occurred in most instances, retain lawyers authorized to practice in that individual county as co-counsel.

6. Thus, Philadelphia lawyers were unable to represent fully and individually the client who retained them. In all such instances when co-counsel was retained, fee splitting occurred between counsel and co-counsel.

7. On behalf of the Philadelphia Bar Association with the cooperation of the Pittsburgh Bar Association, as Chancellor of the Philadelphia Bar Association, I filed a

petition with the Pennsylvania Supreme Court to eliminate these intra-state barriers.

8. In 1965, the Pennsylvania Supreme Court granted the petition without hearing and argument. It changed the rules to eliminate the county barriers and issued an Order declaring upon admission to the Pennsylvania Supreme Court, a lawyer was authorized to practice in all judicial districts and appellate courts in Pennsylvania. Because of different pockets of resistance in some of the judicial districts, it took about five years for the barriers to be fully eliminated. Today, many young lawyers have no memory of these county restrictions, and find these prior local restrictions inconceivable.

9. Speaking for myself as a member of the bar interested in the administration of justice process, I have been a long-time advocate for a uniform federal district court bar admission. See Comisky & Patterson, The Case for a Federally Created Bar By rule Or By Legislation, 55 Temple L.Q.945, 975 (1982) Quoting from that article "Conclusion: the dynamic changes that are now taking place in the practice of law, resulting in the increasing trend towards multi-state law practice and the growth of national and international law firms, have caused `state imposed' barriers to the modern practice of law to become obsolete, inefficient, expensive, and detrimental to the public interest".

9. I fully support the elimination of state imposed barriers to the practice of law in the federal district courts.

MARVIN COMISKY

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Exhibit O - SCIENTIFIC TESTS DEMONSTRATE EXPERTS AND NOVICES ARE MORE QUALIFIED TO JUDGE COMPETENCE THAN LICENSING OFFICIALS. Attached is Klein, Sources of Power (The MIT Press 1999) Chapter 10 The Power to See the Invisible, supra, "Example 10.1 The Instructors Who Couldn't Save Their Own Lives."

Dr. Klein demonstrates controlled tests established:

(i) nine out of ten experts were able to spot another experienced expert;

(ii) five out of ten novices who finished an eight hour course were able to spot an experienced expert; and

(iii) only three out of ten instructors (licensing officials) who taught the novices, but who never actually practiced, were able to spot an experienced expert.

Exhibit O by analogy explains why a Bombay India native who never went to law school can be judged competent on the California bar exam by those who have never practiced (See Exhibit N), and why the Dean of Stanford Law School can be judged incompetent by those who have never practiced. See Exhibit M.

This Exhibit O proof of the blind leading the blind correlates (almost 100%) with Exhibit D - the Rand Corporation studies that admit, beyond any doubt, the

eight-question entirely subjective test given to experienced attorneys is less than .48% reliable.

This cumulative proof confirms the wisdom of the ABA MJP Commission recommendation that experienced attorneys do not need to take another bar exam and should be provided reciprocal admission on motion.

Last but not least, these Exhibits demonstrate the least reliable measurement of competence is to permit novice State licensing officials to judge the competence of experienced federal practitioners.

Dated: December 20, 2005

Respectfully submitted,
JOSEPH ROBERT GIANNINI
Counsel for Plaintiffs

Sources of Power
How People Make Decisions

Gary Klein
The MIT Press
Cambridge, Massachusetts
London, England

***

We played these videotapes to three audiences: ten novices who had just finished an eight-flour CPR course, ten CPR instructors who were experienced teachers but had never performed CPR on an actual victim, and ten paramedics who had used CPR many times. The study called for the participants to make a series of judgments. The last one was perhaps the most interesting. We asked each participant to imagine that it was his or her own life on the line. They had to identify one of six people in the videotapes who they would want to do CPR on them.

The paramedics recognized expertise when they saw it. Nine of the ten picked the actual paramedic. When asked why, they could not point to any one thing. It was the entire pattern of his behavior, the smoothness with which he worked, that they liked. He secured to know what he was doing.

The novices too generally chose the paramedic. He got live of their ten votes. The instructors did not do as well. The paramedic in the tape was not following the rules they taught so carefully to their students. l is wasn't carefully measuring where to put his hands, for example. Only three of the instructors chose him to save their lives.

Civil Action No.
05-cv- 5081 TON

UNITED STATES DISTRICT COURT FOR FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAAMJP (National Association for the Advancement of Multijurisdiction Practice), John F. O'Rourke, Alan Ellis, Donald Harris.
Plaintiffs,

v.

George W. Bush, Alberto R. Gonzales, Hon. John W. Bissell, Chief Judge for the United States District Court for the District of New Jersey, Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katharine S. Hayden, Faith S. Hochberg, Jose L. Linares, William J. Martini, Joel A. Pisano, Alfred M. Wolfin, Hon. Consuelo B. Marshall, Chief Judge of the United States District Court for the Central District of California, Percy Anderson, Terry J. Hatter, Jr., Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter, United States Department of Justice, Anthony J. Scirica, Chief Judge of the Third Circuit Judicial Council, Dolores K. Sloviter, Jane R. Roth, Theodore A. McKee, Marjorie O. Rendell, James T. Giles, Thomas Vaniske, Sue L. Robinson, Doretta W. Ambrose, Garrett Brown Jr., Douglas B. Ginsburg, Chief Judge of the District of Columbia Judicial Council, David B. Sentelle, Karen Lecraft Henderson, A. Raymond Randolph, Judith W. Rogers, David S. Tatel, Merrick B. Garland, Thomas F.

Hogan, Emmet G. Sullivan, James Robertson, Richard W. Roberts, Ellen Segal Huvelle, Reggie B. Walton

FIRST AMENDED COMPLAINT - CLASS ACTION - DECLARATORY & INJUNCTIVE RELIEF FRCP 23(b)(2)

Introduction

1. The Constitution under Article I § 8 authorizes Congress to enact the laws necessary and proper for carrying into execution its enumerated powers. Congress, in the Rules Enabling Act, 28 U.S.C. § 2071 *et. seq.*, authorizes the District Courts to prescribe rules of practice and procedure for the conduct of their business. 28 U.S.C. § 2071(a). Congress, however, spelled out that power to prescribe rules of practice and procedure to the following narrow conditions. First, such "local" rules shall be consistent with Acts of Congress. Ibid. Second, such "local" rules shall be consistent with the *national* rules of practice and procedure. Ibid. Third, such "local" rules shall not abridge, modify, or enlarge any substantive right. 28 U.S.C. § 2072(b). Fourth, all laws in conflict with such *national* rules shall be of no further force or effect. Ibid.

2. Plaintiffs herein challenge, on its face and as applied, on behalf of themselves and others similarly situated in a representative capacity, the "local' rules of approximately 55 federal district courts that categorically, regardless of individual merit or federal practice experience, deny *general* bar admission privileges to attorneys licensed in a sister-state other than the one in which the federal district court sits.

(picture***)

3. Plaintiffs assert these challenged "local" rules are: (i) inconsistent with numerous Acts of Congress, including the Bill of Rights; (ii) not consistent with the national rules of practice and procedure, including FRAP 46 and Supreme Court Rule 5; and (iii) abridge, modify, and enlarge numerous federal substantive rights. Plaintiffs request these challenged "local" rules be declared a nullity and of no force and effect. Plaintiffs further allege these challenged "local" rules are overbroad, constitute facial unlawful viewpoint discrimination, implicate and violate the First Amendment rights to speech, advocacy, expressive association, petition for redress of grievances, the Supremacy Clause, the constitutional right to travel, the constitutional norm of comity, the 6th Amendment right to counsel, and the 5th Amendment rights to due process and equal protection. Plaintiffs request preliminary and permanent injunction barring their enforcement.

Jurisdiction

4. Jurisdiction is provided by 28 U.S.C. § 1331 for cases arising under the Constitution and laws of the United States, and 28 U.S.C. § 1343(a)(3) deprivation of privileges and immunities.

Parties

5. Plaintiffs are the NAAMJP (National Association for the Advancement of Multijurisdiction Practice), a nonprofit corporation, incorporated in California with offices in Los Angeles County, doing business nationally. The NAAMJP is a nonprofit public benefit corporation whose primary purpose is to bring

to life the ABA MJP Commission Recommendations. Plaintiff NAAMJP sues on its own behalf, and the individual and collective members thereof. Plaintiff John O'Rourke is an individual and an award-winning patent attorney licensed in Pennsylvania and residing in Southern California. Plaintiff O'Rourke's patent property practice, similarly to others in the intellectual property field, transcends numerous state lines and is regional and national in scope. Plaintiff Alan Ellis is a national federal criminal defense specialist with offices in Philadelphia, Pennsylvania, and California. Plaintiff is nationally known and recognized as one of the leading experts in federal criminal trial practice. Plaintiff Donald Harris is an attorney with a national practice specializing in bankruptcy law with offices in Ohio. Plaintiff Donald Harris is recognized as an expert in bankruptcy practice and procedure. Plaintiffs John O'Rourke, Alan Ellis, and Donald Harris bring this lawsuit as individuals and also as members of the NAAMJP. Plaintiffs allege the challenged local rules violate both their rights to serve as counsel, as well as their individual right to counsel of choice, in a designated federal public forum on matters of public concern. Plaintiffs further sue on behalf of others similarly situated in a class action representative capacity.

6. Defendants George W. Bush and Alberto R. Gonzales are sued in their official capacity as President and Attorney General. These United States officials have taken an oath of office to faithfully execute the laws and to the best of their ability to "preserve, protect and defend the constitution of the United States." The PREAMBLE to the Constitution informs its purpose to "form a more perfect Union, establish justice, and secure the blessings of liberty." Plaintiffs

allege these non-delegable Executive Office constitutional duties are being trampled by the challenged "local' rules. President Bush is further named as a defendant because plaintiffs allege it is a fundamental betrayal of his public trust as President and Commander in Chief, to send American men and women off to Afghanistan and Iraq to risk life and limb for world democracy, and then to have these same men and women return to America, often maimed and scarred and forgotten, wherein they will be denied the full and equal privileges and liberties of American citizenship by the challenged federal district court "local" rules. Plaintiffs allege the Honorable Attorney General Gonzales is named as a defendant because he has an affirmative non-delegable duty not to facilitate, shield, and assist the usurpation of the Bill of Rights and Congressional powers by the judicial branch in the guise of "local" practice and procedural rules.

7. Defendants are the Hon. John W. Bissell, Chief Judge of the United States District Court for the District of New Jersey, and District of New Jersey Judges, the Honorable Dennis M. Cavanaugh, Joseph A. Greenway, Jr., Katharine S. Hayden, Faith S. Hochberg, Jose L. Linares, William J. Martini, Joel A. Pisano, and Alfred M. Wolfin. These government officials are being sued in their official capacity, as rule-makers, and enforcers of "local" rules, alleged to be unlawful and in excess of authorized discretion.

8. Defendants are the Department of Justice which has a duty to enforce the Rules Enabling Act: and the Hon. Anthony J. Scirica, Chief Judge of the Third Circuit Judicial Council, Dolores K. Sloviter, Jane R. Roth, Theodore A. McKee, Marjorie O. Rendell, James T. Giles, Thomas Vaniske, Sue L. Robinson, Doretta W. Ambrose, Garrett Brown Jr., members of

the Third Circuit Judicial Council. Plaintiffs allege the Judicial Council members have a statutorily prescribed under 28 U.S.C. § 332 (d)(4) continuing periodic supervisory responsibility and duty to review all District Court "local" rules within each circuit to ensure their conformity with 28 U.S.C. §§ 2071-72. Plaintiffs allege a Department of Justice and Judicial Council breach of duty and injury.

9. Defendants are the Hon. Consuelo B. Marshall, Chief Judge of the United States District Court for the Central District of California, and Central District of California Judges, the Honorable Percy Anderson, Terry J. Hatter, Jr., Ronald S.W. Lew, Nora M. Manella, Howard A. Matz, James S. Otero, Dean D. Pregerson, George P. Schiavelli, Christina A. Snyder, John F. Walter, and Steven v. Wilson. These government officials are being sued in their official capacity, as rule-makers, and enforcers of "local" rules alleged to be unlawful, and in excess of authorized discretion.

10. Defendants are the Hon. Mary M. Schroeder, Chief Judge of the Ninth Circuit Judicial Council, Arthur Alarcon, Alex Kozinski, Kim McLane Wardlaw, Marsha Berzon, Andrew J. Kleinfeld, B. Lynn Winmill, Stephen M. McNamee, Terry J. Hatter, Charles R. Breyer, Roger G. Strand, members of the Ninth Circuit Judicial Council. Plaintiffs allege the Judicial Council members have a statutorily prescribed under 28 U.S.C. § 332 (d)(4) continuing periodic supervisory responsibility and duty to review all District Court "local" rules within each circuit to ensure their conformity with 28 U.S.C. §§ 2071-72. Plaintiffs allege a breach of this duty and injury.

11. Douglas B. Ginsburg, Chief Judge of the District of Columbia Judicial Council, David B. Sentelle,

Karen Lecraft Henderson, A. Raymond Randolph, Judith W. Rogers, David S. Tatel, Merrick B. Garland, Thomas F. Hogan, Emmet G. Sullivan, James Robertson, Richard W. Roberts, Ellen Segal Huvelle, Reggie B. Walton, members of the District of Columbia Court of Appeals Judicial Council. Plaintiffs allege the Judicial Council members have a statutorily prescribed under 28 U.S.C. § 332 (d)(4) continuing periodic supervisory responsibility and duty to review all District Court "local" rules within each circuit to ensure their conformity with 28 U.S.C. §§ 2071-72. Plaintiffs allege a breach of this duty and injury.

Class Action Allegations

12. Plaintiffs allege the class that they seek to represent consists of the approximately one million attorneys in the United States that have earned a law degree from an American Bar Association accredited law school, and have been admitted to the bar of either the United States Supreme Court or a State Supreme Court. This class is categorically ineligible for general bar admission privileges in approximately 55 federal district courts. The class plaintiffs seek to represent also includes the American citizens who desire to retain these attorneys as counsel in the United States District Courts.

13. Plaintiffs allege this lawsuit is properly maintainable as a class action under FRCP 23 because of the tens of thousands of individual attorneys and American citizens, affected by each of the district courts' challenged "local" general bar admission rules — is impracticable. The joinder and adjudication with respect to the numerous individual members of the class as a practicable matter would also be dispositive

of the interests of the others not parties to the adjudications, or substantially impair or impede their ability to protect their interests. The filing and prosecution of numerous separate actions would also result in a waste of government and judicial resources, and would further create a risk of inconsistent and incompatible standards and decisions.

14. Plaintiffs allege this lawsuit is properly maintainable as a class action under FRCP 23 because it presents common questions of law and fact. Moreover, plaintiffs allege the present hodge-podge of inconsistent and incompatible federal district court general bar admission standards they are presently subject, which has been referred to as a "minefield" by a United States Judicial Conference study, warrants class action status so that a common uniform national standard is adopted. Plaintiffs allege a common uniform standard is compelled under the Rules Enabling Act.

15. Plaintiffs allege this lawsuit is properly maintainable as a class action under FRCP 23 because it presents typical claims and defenses of the class at large as to both the plaintiffs and the defendants. Plaintiffs allege the government's claims and defenses as to the propriety of challenged local federal district court rules in the District of New Jersey, Central District of California, and the District of Columbia are typical of all of the United States District Courts that categorically discriminate in general bar admission privileges regardless of individual merit. Plaintiffs allege their claims as federal practice attorneys and or/citizens are typical of other attorneys and citizens. Plaintiffs allege the defendants named in this Class Action Complaint are typical of the claims and defenses of the other members of the multiple United States

Judicial Councils and District Courts, who are not named as defendants.

16. Plaintiffs can adequately represent the class. Plaintiffs have national practices and are experts in the specialized federal fields of patents, copyrights, bankruptcy, federal criminal defense, and immigration. Plaintiffs' specialized federal specialties more than adequately represent the federal practice macro. Named Plaintiffs as citizens also have a sufficient stake in the outcome because they are injured by being denied their collateral right to counsel, and they have zealously sought to vindicate their federal rights by this proceeding. Named Plaintiffs do not have interests antagonistic with the class because plaintiffs are only seeking declaratory and injunctive relief, and not monetary damages.

17. Plaintiffs' counsel is qualified to conduct this litigation as 1983 graduate of Temple University School of Law, and a member of the bar of this Court. Plaintiffs' counsel is experienced in federal litigation and MJP litigation. Plaintiffs' counsel is more than able to conduct this litigation.

Venue

18. Venue is founded in this Eastern District, which is also the headquarters for the United States Court of Appeals for the Third Circuit, under 28 U.S.C. §1391(b)(2) "a judicial district in which a substantial part of the events or omissions occurs giving rise to the claim." Plaintiffs allege venue is also appropriate in this federal court because plaintiffs are categorically disqualified from bringing this suit by the challenged local attorney admission rules of the District of Columbia and the Central District of California.

Factual Allegations

19. The American Bar Association has consistently been a friend and trusted advisor on national issues pending before the federal courts, including compensation of judicial officers, judicial independence, sentencing guidelines, and in developing the Rules of Professional Conduct. The American Bar Association Conference of Delegates in 1995 passed Resolution #8 that declares the failure of district courts to provide reciprocal bar admission to out-of-state attorneys drives up the costs of litigation and disserves the integrity of the bench and bar, and should be changed. The United States Supreme Court has recognized that the ABA standards and guidelines are the benchmark for reasonableness.

20. In the last 10 years, with the advent of the 21st Century and Information Age with electronic filing and internet access on the world-wide web, PACER, CM/ECF, and 24/7 access to the district court dockets, there has been a revolution in communication. Recognizing this revolution, the ABA's MJP Commission was staffed by leading lawyers from around our nation. They conducted nationwide hearings and received comments from virtually every arm of the bar concerning reciprocal admission and discipline, among other matters. The ABA MJP Commission, in its report Client Needs in the 21st Century, and based on a careful and meticulous study, determined the best method to measure competence is actual experience practicing law. See www.abanet.org/cpr/mjp **Report 201G** "RESOLVED, that the American Bar Association adopts the proposed *Model Rule on Admission by Motion*, dated August 2002." The ABA MJP web site indicates that 35 states have adopted the

ABA MJP Model Rule for Admission on Motion that was enacted as a result of this study.

21. Paralleling this ABA MJP Commission report, "local" rules governing bar admission were studied extensively in 1995 at the request of the Standing Committee. Marie Leary of the Federal Judicial Center prepared an extensive report entitled "Eligibility Requirements for, and Restrictions on, Practice before the Federal District Court," November 7, 1995, ("Leary Report") *Working Papers of the Committee on Rules and of Practice and Procedure: Special Studies of Federal Rules Governing Attorney Conduct* 125-182 (Administrative Office of the United States Courts 1997). This report is quoted and referenced in Moore's Federal Practice, *infra*.[1]

22. Moore's Federal Practice 3rd Ed., Judith A. McMorrow and Daniel R. Coquillette, "The Federal Law of Attorney Conduct," § 801.20(3) Criteria for General Admission, p. 801-56 states:

According to the "Leary Report" .....

> This extraordinary diversity of bar requirements was almost completely random in terms of characteristics of the district courts, with rural districts and urban districts; districts on tropical islands; western, southern, northern and eastern districts; and large and small districts all showing no particular predilection for any model. The primary justification for divergent local rules, special needs inherent to a

---

[1] Plaintiffs request leave to depart from customary notice pleading and cite to appropriate precedent when necessary to establish the government's position is not substantially justified.

particular district, appeared to be almost completely lacking. Indeed, because many of these local rules were adopted before the 1988 revision to 28 U.S.C. § 2071(b) requiring "appropriate public notice and comment," there is little in the record of why individual courts chose the model they did.

23. Moore's Federal Practice 3rd Ed., Judith A. McMorrow and Daniel R. Coquillette, "The Federal Law of Attorney Conduct," § 801.20(7) p. 801-59 states, "The federal local rules governing attorney admissions are a minefield of inconsistent requirements, almost entirely unrelated to the actual characteristics of any particular type of district." Moreover, the balkanized local rules are "a hardship for Department of Justice attorneys, and other government attorneys, a hardship that has been emphasized by Representatives of the Department of Justice." § 801.20(6) p. 801-58.

24. The Bankruptcy Commission, authorized by the Bankruptcy Act of 1994, has recommended a national bar for bankruptcy cases. The Bankruptcy Commission argued there is no reason why bankruptcy should be localized, dealing as it does with a uniform federal system. Id. at p. 801-59, 60.

25. These challenged quota-based "local" rules provide a crazy quilt pattern that is even more burdensome ten years after the "Leary Report" because of the ABA MJP Commissions recommendation for admission on motion for experienced attorneys that increases the inconsistent minefield by putting federal First Amendment protected wine in State antiquated bottles.

26. Plaintiffs are irreparably injured, and their First Amendment rights and those of others, are being

frozen because of the hodge-podge of "local" attorney admission rules that are a minefield of inconsistency. For example, the 3rd Circuit Judicial Council, as noted above, has a supervisory responsibility under 28 U.S.C. § 332 (d)(4) to review all District Court "local" rules within the circuit to ensure their conformity with 28 U.S.C. §§ 2071-72. The local rules in the 3rd Circuit district courts are all over the place and the product of unbridled and unsupervised licensing discretion. District of New Jersey Local Rule 101(b) limits general admission to New Jersey licensed lawyers. New Jersey has rejected the ABA Model Rule for admission on motion. An out-of-state attorney is compelled to accept the markedly inferior *pro hac vice* admission available, and has to pay bar annual bar dues to the State of New Jersey as long as he is appearing in the federal case for this second class status. Local Rule 101(c). Moreover, her client has to pay two lawyers in the District of New Jersey to perform services that could be more efficiently and expeditiously performed by one federal practice specialist.

27. In contrast, with the NJ local rule licensing fees payable to the State of New Jersey Lawyers' Fund for Client Protection for second class federal privileges — a licensing tax that is not authorized by Congress — Western District of Pennsylvania LR 83.2.1 C authorizes general admission to "Any person who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States district court, may be admitted to practice before the bar of this court." Approximately 1/3 of the federal district courts have admission rules paralleling the Western District of Pennsylvania.

28. In further contrast, the Eastern District of Pennsylvania limits general admission to Pennsylvania licensed attorneys. The State of Pennsylvania, however, has adopted Pennsylvania Bar Admission Rule 204, an admission on motion provision for States that provide reciprocity to Pennsylvania attorneys. Attorneys from 18 states are categorically denied admission on motion to the Pennsylvania Supreme Court because these states do not grant Keystone State lawyers the same reciprocal privilege. Thus these lawyers are vicariously disqualified from general admission on motion in the Eastern District of Pennsylvania, based on the State of Pennsylvania's "horse-trading" incorporated by the local rules of the Eastern District of Pennsylvania. The wasted costs in time and money attributable to requiring expert federal practice specialists to satisfy the unbridled whim of local State licensing officials is a virus that poisons our liberties and castrates our First Amendment freedoms.

29. The apex of federal delegation of jurisdiction and a non-delegable federal duty is found in the four federal district courts in California. Each of these federal district have blindly and entirely assigned their bar admission duties to the State Bar of California without providing any standards or guidelines.

30. Moreover, to gain the privilege of federal admission, experienced out-of-state attorneys are compelled to take the State of California's entirely subjective bar exam. The costs in time and money are an overwhelming hardship and a significant deterrent. This popularity contest, which is incorporated by reference in the four federal district courts in California, consists of 6 one-hour essay questions that are primarily on *general* principles of law, and 2 three-

hour performance tests wherein the experienced sister-state attorney is compelled to write his opinion in a memorandum of law. If one flips a coin, the probability is that .5 of the time it will be heads and .5 of the time it will be tails. Rand Corporation statistical analyses exam after exam establish these subjective tests are less reliable than .5. These test results by definition are "junk science" because the results are less reliable than flipping a coin. These test results are not even admissible into evidence in the federal courtroom under Daubert and the Federal Rules of Evidence 700 series.

31. The mischief from this minefield of balkanized local rules is "a house divided against itself." Members of the bar who are received into that ancient fellowship for something more than private gain, and like the Court itself are instruments of justice, are subject to territorial "horse-trading" where local licensing officials are authorized unbridled licensing discretion. The challenged "local" rules reinforce and buttress these State imposed territorial tariffs on the American people's First Amendment rights. These federal "local" rules further insulate State segregationist policies from independent federal judicial review, as this case make clear, because they wall off experienced attorneys from out-of-state seeking to champion locally unpopular causes and put "duct tape" over their mouths when seeking to vindicate federal rights in the federal courtroom.

32. The antiquated nature of the challenged balkanized "local" attorney admission rules can be further illustrated by the 21st Century standards in other leading nations. In the European Union, for example, an attorney licensed in France can set up shop in Germany and vice versa. The same holds true in the Canadian provinces wherein the right to travel and

petition are mutually reinforcing. Likewise, the United States is also a member of the World Trade Organization, and it has signed GATS (the General Agreement in Trade in Services). GATS' requires that licensing regulations may not be "more burdensome than necessary to ensure the quality of the service or ensure a legitimate objective." Lawyers licensed in foreign countries now have greater free trade rights than sister-state attorneys have under the Bill of Rights and the challenged "local" rules.

First Cause of Action – National Rules of Practice and Procedure Violation of 28 U.S.C. § 2071, § 2072, § 332(d)(4)

33. As noted above, the Standard of Review for local rules is as follows. First, such "local" rules shall be consistent with Acts of Congress. Ibid. Second, such "local" rules shall be consistent with the *national* rules of practice and procedure. Ibid. Third, such "local" rules shall not abridge, modify, or enlarge any substantive right. 28 U.S.C. § 2072(b). Fourth, all laws in conflict with such *national* rules shall be of no further force or effect. Ibid.

34. The federal right to counsel in the federal courts stems from the First, Fifth, Sixth, and Seventh Amendments and is statutorily authorized by *28 U.S.C. § 1654. Appearance personally or by counsel*, "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

35. Federal Rule of Appellate Practice 46 and Supreme Court Rule 5 are national rules of practice and procedure enacted under the national rule-making

standards of 28 U.S.C. § 2072. Both of these national rules were ratified by Congress. These national rules implicate directly and indirectly the right to counsel. FRAP 46 and Supreme Court Rule 5 provides general bar admission privileges to all sister-state attorneys in good standing.

36. The challenged "local" rules of the Central District of California and District of New Jersey (and other parallel challenged district court local rules) that categorically deny reciprocal general admission regardless of individual merit are unlawful because they modify, abridge, and enlarge the right to counsel as prescribed by the national rules. They are further inconsistent with the national rules as Congress has never approved discrimination in federal bar admission based on state licensure. The right to counsel is further a substantive right. The local rules are inconsistent with FRAP 46 and Supreme Court Rule 5, and they violate that substantive right because they enlarge the rights of forum state attorneys to appear as counsel, and they modify and abridge the rights of non-forum state attorneys to serve as counsel. The rights of all America citizens are, therefore, modified by these local rules.

37. Likewise, 5 U.S.C. § 500(b) is an Act of Congress that provides all licensed American attorneys in good standing are authorized to appear as counsel before federal administrative agencies. The challenged local rules are inconsistent with 5 U.S.C. § 500(b) because an attorney is qualified by this Act of Congress to serve as counsel for a party in the federal administrative agencies, and by other Congressional Acts in the federal appellate courts (FRAP 46), the U.S. Supreme Court (Rule 5) – but not under the challenged local rules. The rights of all America citizens

are modified by these local rules. These local rules further provide monopolies to local attorneys. Monopoly protection is not a legitimate governmental interest.

38. Additionally, Federal Rule of Civil Procedure 82 is a national rule of practice and procedure enacted under the national rule-making standards provided by 28 U.S.C. § 2072. FRCP 82, in pertinent part provides, "These rules shall not be construed to extend or limit the jurisdiction of the United States District Courts." Many areas of federal law are expressly and exclusively federal and have little to do with state law, including patents, copyrights, federal criminal defense, admiralty, and bankruptcy. The challenged local rules are inconsistent with FRCP 82, because by categorically piggy-backing forum state law that has nothing to do with federal law, they limit the jurisdiction of the United States District Courts to the forum State Courts. Plaintiffs, as federal practice specialists, are injured because their federal right to appear as counsel in the federal courtroom and to retain counsel is chained to state law.

39. Additionally, Federal Rule of Civil Procedure 1 is a national rule of practice and procedure enacted under the national rule-making standards provided by 28 U.S.C. § 2072. FRCP 1, in pertinent part provides, "These rules govern the procedure in the United States District Courts....They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Consistent with FRCP 1, is the well established federal law that holds the constitutional right to "free expression," that a law is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content or subject matter of their

speech. The challenged local rules, as announced by the American Bar Association Recommendation 8 (1995) are unjust. They abort the right to counsel by limiting the availability of out-of-state counsel. They delay and increase the costs of federal litigation by making a client pay two attorneys for one service. And they make duplicate and triplicate State bar admission for federal practice specialists an expensive and time-consuming minefield.

40. The Federal Rules of Evidence are national rules enacted under the national rule-making standards provided by 28 U.S.C. § 2072. FRE 102 tracks FRCP 1. FRE 102 requires the "elimination of unjustifiable expense and delay ... to the end that truth may be ascertained and proceedings justly determined." The local rules by walling off attorneys from other states, presume either that out-of-state attorneys are unethical or incompetent. This presumption is inconsistent with the self-evident truth that all men are created equal. If a citizen is presumed to know the law regardless of where he or she lives and is authorized to represent himself in the federal courtroom regardless of where he or she lives, it is fantasy to presume an experienced federal practice specialist does not know the law. Truth is not served by darkness and nailing the doors shut to free access to the federal courtroom.

41. Likewise, Article V Privileges, Rule 501 provides, in pertinent part, "...the privilege of a person, witness...shall be interpreted by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience." It is well established law that: (i) attorneys and clients have an attorney-client privilege; (ii) the opportunity to practice law is a constitutionally protected privilege and immunity; and (iii) the people's rights to petition

the government is a constitutionally protected privilege and immunity. The challenged "local" rules are inconsistent with the federal rules of privilege as interpreted by the United States courts, and they modify, abridge, and enlarge the privileges and immunities of citizenship by departing from a color blind constitution.

42. Plaintiffs allege the district courts may not, under the guise of its local rule-making power, impose the sort of substantive restraints challenged herein. Plaintiffs allege the challenged local rules are not the kind of details delegated in their rule-making authority, and they are a nullity because their adoption as federal law falls outside the local rule-making authority of the district courts.

Second Cause of Action
Violation of the First Amendment Overbreadth Doctrine

43. The preceding allegations are incorporated herein.

44. The First Amendment rights are not subject to a majority vote as has occurred with the adoption of the local rules, and they are thus unlawful.

45. The challenged local rules are an enormous prior restraint. Plaintiffs and other American citizens' First Amendment freedoms to advocate, assembly, and petition are being suppressed across our Union and in many cases suffocated by this prior restraint.

46. When a court decides to impose a speech-restrictive injunction, the conclusions it reaches must be "supported by findings that adequately disclose the[ir] evidentiary basis . . ., that carefully identify the impact of [the defendants'] unlawful conduct, and that

recognize the importance of avoiding the imposition of punishment for constitutionally protected activity." NAACP v. Claiborne Hardware Co., 458 U.S. 886, 933-34 (1982). There is neither an evidentiary basis nor a judicial finding of unlawful conduct, as the "Leary Report" verifies, against non-forum state attorneys that would serve to justify the suppression of their First Amendment liberties via the "local" rules prior restraint.

47. The defendants cannot justify this significant federal restraint and discrimination in a designated public forum. They do not have a compelling need because federal law and procedure are uniform. Monopoly protection is not a legitimate government interest. The challenged local rules are not narrowly tailored because the U.S. Supreme Court, U.S. Courts of Appeals, and approximately 1/3 of the U.S. District Courts do not censor out-of-state attorneys or put up fences around their courtroom. Moreover, reciprocal admission on motion is the norm in 35 states. Reciprocal discipline is the norm in both the State and federal courts.

48. The District Courts can protect their interests in the administration of justice process through "less restrictive means" than categorical exclusion of citizen-attorneys licensed in other states.

49. Enforcement of the local rules would a violation of the overbreadth doctrine.

Third Cause of Action
"Viewpoint Discrimination"

50. The preceding allegations are incorporated herein. These challenged "local" attorney only admission rules are quintessential viewpoint

discrimination. Only "local" attorneys are permitted to freely speak, freely represent their client and engage in expressive association, or freely petition for redress of grievances in a designated national public forum on matters of public concern.

51. Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or it's content. Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972). A regulation that denies one group of citizens the right to address a selected audience on controversial issues of public policy is plainly viewpoint discrimination. Consolidated Edison Co. v. Public Serv. Comn'n, 447 U.S. 530, 546 (1980).

52. Viewpoint discrimination is a particularly egregious form of content discrimination. It is presumptively unconstitutional. Our government is prohibited from favoring one viewpoint over another. See Rosenberger v. Rector And Visitors of Univ. of VA, 515 U.S. 819 (1995)(Holding that although it may regulate the content of expression when it is the speaker or when it enlists private entities to convey its own message, the University may not discriminate based on the viewpoint of private persons whose speech it subsidizes even when the subject is religion). "To permit one side of a debatable public question to have a monopoly in expressing its views . . . is the antithesis of constitutional guarantees." Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n, 429 U.S. 167, 175-176 (1976). "A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government

official." Lakewood v. Plain Dealer Publishing Co, 486 U.S. 750, 763 (1988).

Fourth Cause of Action
Violation of Supremacy Clause

53. The preceding allegations are incorporated herein.

Fifth Cause of Action
Violation of Constitutional Norm of Comity

54. The preceding allegations are incorporated herein.

Sixth Cause of Action
Violation of Constitutional Right to Travel

55. The preceding allegations are incorporated herein.

Seventh Cause of Action
Violation of First Amendment Right to Free Speech

56. The preceding allegations are incorporated herein.

Eighth Seventh Cause of Action
Violation of First Amendment Right to Free Speech/Compelled Speech

57. The preceding allegations are incorporated herein.

Ninth Cause of Action

Violation of First Amendment Right to Expressive Association

58. The preceding allegations are incorporated herein.

Tenth Cause of Action
Violation of First Amendment Right to Petition

59. The preceding allegations are incorporated herein.

Eleventh Cause of Action
Violation of Sixth Amendment Right to Counsel

60. The preceding allegations are incorporated herein.

Twelfth Cause of Action
Violation of 5th Amendment Equal Protection

61. The preceding allegations are incorporated herein.

Thirteen Cause of Action
Violation of 5th Amendment Due Process

62. The preceding allegations are incorporated herein.

63. It is well settled no man can be a judge in his own case. The judicial defendants have an across the board conflict of interest because they are both rule-makers and adjudicators.

64. The Department of Justice has a conflict of interest because it has both a duty to defend the law, and to defend the United States judicial branch.

65. This conflict of interest is a due process violation that injures plaintiffs.

Wherefore, the Plaintiffs request the following relief:

1. A declaratory judgment holding that "local" district court attorney admission rules that deny general admission privileges to non-forum state licensed attorneys are unlawful.

2. A preliminary injunction and a permanent injunction prohibiting the enforcement of any "local" district court rules that denies general admission privileges to non-forum state licensed attorneys.

3. Costs.

4. Attorney fees under the Equal Access to Justice Act.

5. Any other relief the Court deems warranted.

Dated: December 12, 2005
By: Joseph Robert Giannini
Joseph Robert Giannini, Esq.
PA SB # 38814
Counsel for Plaintiffs
925 S. Westgate Ave. #102
Los Angeles, CA 90049
Phone 310 442 9386
Fax 310 826 7989
Email: j.giannini@verizon.net

CONSTITUTIONAL PROVISIONS

Amendment I. Religious and political freedom.

Congress shall make no law ... abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. Criminal actions — Provisions concerning — Due process of law and just compensation.

No person shall ... be deprived of life, liberty, or property, without due process of law;

UNITED STATES STATUTES

28 U.S.C. § 332. Judicial Councils of Circuits.

(d) (4) Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found.

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

...

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

...

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

28 U.S.C. § 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 2071. Rule-Making Power Generally.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

28 U.S.C. § 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. § 2075. Bankruptcy Rules.

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

28 U.S.C. § 2077. Publication of rules; advisory committees

(b) Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall

appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with section 5703 of title 5.